

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 6, 2003

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 6, 2003, 2002, at 1:32 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Bud Hentzen, Chair; Kerry Coulter (out before item 10 was presented) Vice-Chair; Don Anderson; James Barfield; Elizabeth Bishop; Frank Garofalo; Bill Johnson (in @ 2:08 late arrival); Ron Marnell; John McKay, Jr. (out before item 10 was presented); Jerry Michaelis; Harold Warner; Ray Warren; and David Wells (out @ 4:20). Staff members present were: Dale Miller, Secretary; Donna Goltry, Assistant Secretary; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; and Rose Simmering, Recording Secretary.

1. Resolution Considering the Adoption of a Redevelopment Project Plan (Tax Increment Financing) for the Riverwalk Redevelopment Project for the East Bank Redevelopment District I, presentation by Alan Bell, Director of Economic Development.

ALAN BELL, Economic Development Director presented Riverwalk Redevelopment Project:

In 1995, the City Council took the necessary legal steps to establish the East Bank Redevelopment District for the purpose of generating tax increment financing for public improvements located within the district. On September 10, 2002, the City Council approved a Development Agreement and Master Plan for the development of the Eastbank Redevelopment District. The City proposes to undertake a Redevelopment Project within the East Bank Redevelopment District in which tax increment financing will be used to develop a mixed-use development that incorporates a waterway system, public parking facilities, streetscape improvements and open areas with privately developed office, retail, residential, entertainment venues and waterfront restaurants. The project area is from Kellogg Street to Waterman Street and from Main Street to Mclean Boulevard. Before any incremental tax revenues can be captured and paid to the City for such purposes, the City Council must adopt a redevelopment plan, following notice and hearing, which provides details of the redevelopment project and the costs to be paid with tax increment financing.

BARFIELD You talk about the public side of this to acquire the land. Can you tell me about how much land the City owns now?

BELL It is 25 acres all together. Somewhere around 17 ½ acres we own already, and that leaves 7 ½ acres that we would need to acquire. That is probably pretty close.

BARFIELD You talked about 500 jobs. Is that 500 new jobs or jobs that will transfer within the industry from one site to another?

BELL Some of these jobs will be transfers jobs. There will be restaurants and other businesses that will move from other areas of Wichita there. The developers' intent is that they want national restaurants and retail firm to come to town. I don't think the 500 includes the office workers; but if it did they would be out marketing the office space.

BARFIELD The 227% was that based on new jobs or just the 500 jobs in order for us to get the return?

BELL I don't know the answer to that.

MCKAY Mr. Bell, we are being asked to say that this is in compliance with the Comprehensive Plan. Where is this area located in that document (referring to the Comprehensive Plan)?

BELL I would refer that question to Dale.

DALE It is the Core area that is shown as an insert on the Comprehensive Plan and marked as "See Adopted Downtown Plan". That downtown plan was adopted in 1989 or 1990 thereabouts.

HENTZEN Does anyone have a conflict of interest on this panel?

WELLS Yes, I do. I will step down for this item and abstain.

ANDERSON Has the City Council approved of this redevelopment plan?

BELL No.

ANDERSON What are the taxing consequences of the land that the City owns that you are going to lease for 99 years? What kind of arrangement will be made?

BELL The land will be on the tax roles and full taxes will be paid. There will be no tax exemptions.

ANDERSON How will that be reflected? Say, 25 years from now, the City will own the land and it will still pay taxes on the land?

BELL It will be triple net lease terms so that the developers or lessees will be responsible for paying taxes.

ANDERSON There will be a lot of current business that will be relocated within the area down here. One of them is the City Arts and it will cost us about 2 million. Is that cost in this project already?

BELL No, because it is a separate project.

ANDERSON That doesn't make any difference. It is still an expense of this project. I think you need to look into that.

HENTZEN You said something about 3 million and I think you meant 30 million. I also believe you used the term 1985 when you intended to use the term 1995.

BELL The context of 1995 was the District was established.

HENTZEN The T.I.F. financing, and that is that you have proposed to use the 1995 basis for the value of the property at that time, and now we are going to go to the point of this year, I guess, as to what properties will be included in the T.I.F. Districts. What T.I.F. means is that the funds that will be paid for taxes on all those properties and the increase of the value will be the financing right? Do I assume right if you pass T.I.F. financing that all the increase in value in that district the City has committed that the increase in value will all be spent in that District.

BELL Yes, as long as bonds are out.

HENTZEN And that means that any cost from general fund will not be contributed to the general fund from that district. The other cost to run the City or the area will not have benefit from the increased values of that district.

BELL Yes, that it is a correct statement.

ANDERSON Until the bonds are paid.

MCKAY I am looking at the map, I think if you look at the map it looks like the City owns more than that.

BELL That land we have owned we have taken off the tax role. There may be some land that we are leasing to Wichita Independent Business Association and I believe we pay taxes on that.

MCKAY The majority of the area is off the tax roles now. Is the T.I.F. area from Kellogg to Water to Main?

BELL It is Douglas to Kellogg and Main to the river.

GAROFALO The land that is leased--who and after the improvements are made on that land--who will pay taxes on the land?

BELL The lessee or the developer will be responsible to pay taxes on the land. It would not be the City it will be whoever will be using the land?

ANDERSON Why doesn't the City just sell the land?

BELL My understanding is that the desire of the City to maintain the Riverbank land. Some of this land is not owned by the City. The City of Wichita wants to protect the investment and the core area of Century II.

ANDERSON Long term leases--this hasn't always been the practice of the City. I have reservations about the City owning the whole downtown in term of long-term leases. It is something that needs to be looked at.

BISHOP Is there anything from other states or other communities that have this same kind of ownership?

BELL This may be fairly unique. Pueblo has a municipally owned area and they intend to build it out. In Bricktown in Oklahoma City, the land is privately owned because it was already there. However they do own property. For example, the Bass Pro project that is going in Bricktown is on the canal their waterway, and there the development plan is to lease the property. The City will own the property, though.

ANDERSON In the urban renewal days in terms of developing the property--this development has started in the last 15 years.

COULTER The Star bonds, does that tie back to this also?

BELL That is a future enhancement we hope to bring back to you. The Legislature needs to pass a new law, but it is difficult to predict. If it does pass, we will be amending this plan and brining this back to you for further consideration.

HENTZEN The Star bonds are not involved in the infrastructure right?

BELL Correct, they are to help the private investors.

MCKAY For this T.I.F. money, that can only be used for infrastructure or purchase. It cannot be construction, right?

BELL That is right. It cannot be used for privately owned or lease buildings.

HENTZEN Something about that waterway--how does the water get out of there?

BELL We have engaged the City's Water and Sewer Department and Public Works Engineering. They are working on this project. They went to other parts of the country to see how it would work, and it is all way beyond me how it will work.

HENTZEN If you look in your red booklet, the area that is in the T.I.F. and the material in the Section #7 is very informative it gives you a good clue about what we are talking about.

MOTION: that this in compliance with the Comprehensive Plan.

MICHAELIS moved, **MARNELL** seconded the motion, and it carried (11-0-1) **WELLS** abstained.

2. **Approval of MAPC meeting minutes of February 20, 2003.**

MOTION: That the minutes for February 20, 2003 be approved.

BISHOP moved, **COULTER** seconded the motion, and it carried (11-0-1) **GAROFALO** abstains.

3. **Consideration of Subdivision Committee Recommendations**

3-1. **SUB2002-134 – Final Plat – ANN WALENTA ADDITION, located on the southeast and southwest corner of Kellogg and Oliver.**

- A. Municipal services are available to serve the site.
- B. A temporary easement by separate instrument should be submitted to cover the existing sewer line to be abandoned unless the sewer line is abandoned before the plat is recorded.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. In accordance with the CUP approval, a guarantee shall be provided for a continuous decel lane on the west side of Oliver from Kellogg off-ramp south to the full movement entrance and a decel lane on east side of Oliver from Eilerts Street to the right-in/right-out access point.
- F. The plat proposes two access openings along the west side of Oliver and one opening along the east side of Oliver in accordance with the CUP approval. A guarantee is required for construction of two channelized rights-in/out openings for the northernmost openings.
- G. **The Subdivision Committee approved both openings along Kellogg Drive, with the easterly opening limited to rights-in/out only. The face of the plat shall include language denoting that the opening along Kellogg Drive west of Oliver is subject to KDOT approval.**
- H. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- J. Since the vacation of Dellrose Ave has created an off-site stub, a guarantee shall be provided for a hammerhead turnaround for the terminus of Dellrose.
- K. **The Applicant shall dedicate 11 feet of additional right-of-way. A decrease in setback shall be platted."**
- L. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Oliver Retail Center Community Unit Plan (CUP 2002-20, DP-261).
- M. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that

the type of delivery, and the tentative mailbox locations can be determined.

- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

NEIL STRAHL, Planning staff presented staff report.

WARREN At subdivision there was discussion about that street being closed. We didn't see the need to take an additional 11 feet off of that property to the north.

HENTZEN So the Subdivision recommendation was that we not request that right-of-way and that vote was unanimous.

STEVE LACKEY, Director of Public Works, Normally this street right-of-way would be 60 feet wide. We are trying to create an area between the pavement and the new property line that would accommodate any utilities. I am not just talking about taking right-of-way just to accommodate any kind of City use, but there could be other facilities that would want to use this right-of-way and there would be a total lack of space to be able to do that. We would support a vacation of this roadway because it is lightly used and we would like to get out from underneath the responsibility of maintaining it. However, it takes both sides of the street to approve a vacation like this, and I think it would be a bad policy and a bad precedent to start by not having properties dedicate right-of-way when they should dedicate theirs; and it is not even their fair share. Normally they would be dedicating more than what they are being asked to dedicate. We would suggest that you allow this dedication and then let the vacation proceedings take place later. I understand that the staff is okay with reducing the setback, so we wouldn't be inflicted any undo harm on them in terms of the amount of square footage that they could develop on the property.

WARREN I don't think it was ever suggested to us that you would like a utility easement. I think that would have been met with some favorable approval. We just didn't see the need for a dedication of right-of-way as opposed to an easement.

JOHNSON The other thing was the setback ... that is why they didn't want the additional 11 feet because of the setback is going to move that building back another 11 feet.

LACKEY I think it is a precedent--not requiring dedicatio--and it is not something we have done in the past. Plus planning staff said that they and the applicant had worked out the setback where it wouldn't damage their use of the property.

MILLER Our understanding was that he was amiable to the dedication if we reduced the setback and we will do that.

STRAHL I haven't spoken to the applicant today.

WARREN That wasn't the case last week. He did not want to dedicate that 11 feet.

STRAHL My understanding is that he would have been okay with the dedication if we reduced the setback on the C.U.P.

JOHNSON I think, at the time, the staff had not agreed with him on the reduced setback at last week's meeting, and then he came back and said he wanted to look at vacating it.

MOTION: To defer the item for two weeks and get the agreement with the applicant.

BARFIELD moved, **COULTER** seconded the motion.

BISHOP I would like to make a motion to approve the plat with the 11-foot dedication. I don't think that we can assume the vacation of that street is going to happen.

HENTZEN Let me ask Subdivision what was it that you approved?

WARREN We approved it subject to staff condition except for Item 11, and we deleted that condition. We did that because I hate to make someone give up that land because it is City policy. If the City needs it, that is different.

HENTZEN Elizabeth did you vote on that?

BISHOP No, I did not I was not there at that time. Let me make it clear that my motion was to approve the plat with the 11-foot dedication.

WARREN I am going to oppose that motion.

MICHAELIS I have a substitute motion to approve with the 11 ft dedication and reduction of the setback.

HENTZEN I did not hear it addressed that way.

BISHOP I think we need to follow through on this motion. I was not making my motion as a substitute motion.

SUBSTITUTE MOTION: To approve the plat with the 11-foot dedication pursuant to staff agreeing to waive that 11-foot off the required setbacks so that it does not have a negative effect on the property.

MICHAELIS moved **WELLS** seconded the motion, and it carried (11-2) **WARREN** and **BARFIELD** opposed.

JOHNSON I am going to vote for the substitute motion because, I know the other day, I know the setback was a concern to them and if they have worked that out with staff I am going to support this motion.

3-2. SUB2002-140 – Final Plat – CLEAR CREEK ADDITION, located on the west side of 143rd Street East and south of Kellogg.

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.

Block 3 shall be platted as two separate blocks.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the drainage plan. **The drainage plan is approved. Minor revisions will need to be made.**
- E. **Traffic Engineering** has requested a petition for left turn lanes along 143rd St. East.
- H. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. The **County Fire Department/GIS** needs to comment on the plat's street names. **Revised street names have been requested.**
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that

the type of delivery, and the tentative mailbox locations can be determined.

- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (12-0).

3-3. SUB2003-10 – One-Step Final Plat – NATIONAL BY-PRODUCTS SECOND ADDITION, located south of 21st Street North, east of Broadway.

- A. **City Environmental Health Department** has advised that this site is located in the North Industrial Corridor which requires access to the property for continued pollution site monitoring. Limited Phase II investigation of the property is needed prior to recording of the plat and prior to any development and/or construction. A restrictive covenant shall be provided to that effect.
- B. Municipal services appear to be available to serve the site. **City Engineering** needs to comment on the need for guarantees or easements.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **City Engineering requests the drainage plan denote that runoff will be collected and piped to ditch.**
- E. **Traffic Engineering** needs to comment on the access controls. The plat proposes three access openings along Mosley. **Traffic Engineering has approved access controls.**
- F. The applicant shall contact abutting property owners to the south regarding vacation of the alley. In the event a vacation is not desired, a turnaround would be needed at the terminus of the alley.
- G. The applicant has platted a contingent dedication of right-of-way along a portion of Mosley Avenue. The plat's text shall state that the dedication shall become effective upon removal of the existing buildings or in the event that the City determines a need for the ROW for any street-related purposes.
- H. The signature line for the City Clerk needs to be revised to reference "Pat Graves".
- I. The Applicant is advised that if platted, the building setback may be reduced to 20 feet.
- J. The applicant is advised that in regard to the portion of the buildings within the building setback; that while such areas of the existing structures may be maintained, no enlargement of the buildings in such area will be allowed and if removed, all subsequent rebuilding shall observe building setbacks.
- K. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges

the signatures on this plat, to be printed beneath the notary's signature.

- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (12-0).

This item considered at conclusion of Item 10.

3-4. SUB2003-11 – One-Step Final Plat – KANSAS FOOD BANK WAREHOUSE ADDITION, located on the south side of Douglas, east of Hydraulic.

- A. Municipal services are available to serve the site. **City Engineering** needs to comment on the need for guarantees or easements. **A temporary easement and guarantee need to be provided for relocation of sewer lines. A 5-ft utility easement is needed along Minneapolis. The length of the water mains needs to be reduced at site development.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. As denoted on the site plan, the applicant proposes an off-site access opening along Douglas, east of the plat. **Traffic Engineering has requested that the opening along Douglas be rights-in/out. This condition shall be included with the Protective Overlay associated with the zone change.**
- E. The applicant is advised to contact OCI regarding the need for a minor street privilege permit regarding the parking area off of Douglas located within the City right-of-way.
- F. **Traffic Engineering** needs to comment on the need for additional right-of-way along Douglas. **A 10-ft contingent street right-of-way is requested.**
- G. The plat's text shall note the dedication of the street to and for the use of the public.
- H. Since the vacation of the north-south alley has created an off-site stub, A guarantee is required for a turnaround at the terminus of the north-south alley. **The length of the hammerhead needs to be increased to 60 feet.**
- I. The Applicant shall guarantee the paving of the off-site turnaround for Minnesota Avenue.
- J. The Applicant has platted a 10-ft building setback along Douglas which represents an adjustment of the Zoning Code standard of 20 feet for the LI, Limited Industrial District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission. **The Subdivision Committee recommends the approval of this modification.**
- K. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

GAROFALO moved, **WARNER** seconded the motion, and it carried (11-0). **COULTER** and **MCKAY** absent.

This item considered at conclusion of Item 11.

3-5. SUB2003-12 – One-Step Final Plat – RUSTY ECK FORD ADDITION, located on the northwest corner of Kellogg and Armour.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for guarantees or easements. City Water and Sewer Department has requested a 20-ft utility easement for the sanitary sewer line located within the 10-ft ingress-egress easement. A water line will need to be abandoned at site development. The 8-ft utility easement located in the southwest portion of the plat needs to be increased to 20 feet.
- B. This plat will be subject to approval of the associated zone change and any related conditions of such a zone change.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- E. Traffic Engineering needs to comment on the need for access controls. The PUD site plan proposes three openings along Kellogg. Traffic Engineering has approved three openings along Kellogg. The easternmost future opening shown on the PUD along the Kellogg Frontage Road is not permitted.
- F. Right-of-way widths need to be denoted on abutting streets.
- G. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Rusty Eck Ford P.U.D. (PUD 2003-01).
- H. The applicant proposes a wall to be located along the property line within the utility easements. In the event a masonry wall is erected, a Hold Harmless Agreement will need to be provided to the Water and Sewer Department.
- I. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- J. A P.U.D. Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved P.U.D. (referenced as PUD 2003-01) and its special conditions for development on this property.

- K. The signature line for the City Clerk needs to be revised to reference "Pat Graves".
- L. The MAPC signature block needs to reference "Dale Miller, Secretary".
- M. The MAPC signature block needs to reference "Bernard A. Hentzen, Chair".
- N. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- O. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- P. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.) A note shall be placed on the final plat stating that the addition (property owner) shall allow ingress/egress to the electrical substation site at all times.**
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Additional easements are requested by Westar Energy.**
- Y. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report

WARREN moved, **JOHNSON** seconded the motion, and it carried (10-0). **COULTER, MCKAY, and WELLS** absent.

This item considered at conclusion of Item 8.

3-6. SUB2003-01 – One-Step Final Plat – SPENCER'S SECOND ADDITION, located on the west side of Hoover, north of Central.

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved.
- B. Municipal water services are available. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. **City Water and Sewer Department advises that the property has not been assessed for the water main. The applicant will need to pay fees in lieu of assessment or submit an application to the Director of Water and Sewer Department for a waiver of the fees.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** has approved the drainage plan. As drainage will be directed onto I-235, a letter shall be provided from

KDOT indicating their agreement to accept such drainage.

- E. The plat proposes six access openings along Hoover. **Traffic Engineering** has approved the access controls.
- G. **Traffic Engineering** has requested the dedication of additional right-of-way along Hoover to conform with the 60-ft half-street right-of-way required by the Access Management Regulations.
- H. The Applicant shall guarantee the paving of Hoover.
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- K. The signature line for the City Clerk needs to be revised to reference "Pat Graves".
- L. On the final plat, the MAPC signature block needs to reference "Dale Miller, Secretary".
- M. The year "2003" needs to replace "2002" within the signature blocks.
- N. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for all of the lots. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

JOHNSON moved, **WARREN** seconded the motion, and it carried (13-0).

3-7. **DED2003-07 – Dedications – ACCESS CONTROL, for property located on the southwest corner of Funston and Broadway.**

CASE NUMBER: DED 2003-07 -- Dedication of Access Control from Ernest C. Doyon and Stephen R. Moss, for property located at the southwest corner of Funston and Broadway.

OWNER/APPLICANT: Ernest C. Doyon, 1825 S. Broadway, Wichita, KS 67211; and
Stephen R. Moss, 2440 Blumfield Cr., Wichita, KS 67226

AGENT: Ferris Consulting, Inc., C/O Greg Ferris, P.O. Box 573, Wichita, KS 67201

LEGAL DESCRIPTION: Lots 98-108 (even) Lawrence Avenue, now Broadway Avenue, English's Seventh Addition, to
Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This Dedication is a requirement of CON 2002-54, and is being dedicated for access
control, except for two openings, along Broadway Avenue.

Planning Staff recommends that the Dedication be accepted.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (12-0). **JOHNSON** absent.

4-1. VAC2003-02 Request to vacate a 20-foot platted easement, located northwest of 29th Street North and Webb Road.

OWNER/APPLICANT: GTB Enterprises Inc., c/o Charlie Larson

AGENT: MKEC Engineering Consultants Inc., c/o Greg Allison & Brian Lindebak

LEGAL DESCRIPTION: The south 10-feet of Lot 1, Block 1, Mediterranean Office Park Addition except the easterly
20-feet thereof; and except the westerly 20-feet thereof;
And also, the north 10-feet of Lot 2, Block 1, Mediterranean Office Park Addition, except
the westerly 20-feet thereof;
And also, the north 10-feet of Lot 3, Block 1, Mediterranean Office Park Addition,
And also, the north 10-feet of Lot 4, Block 1, Mediterranean Office Park Addition.

LOCATION: Generally located northwest of the 29th Street North – Webb Road
intersection, 9920 E 29th Street North.

REASON FOR REQUEST: Expansion of existing medical facilities.

CURRENT ZONING: Subject property and all adjoining properties are zoned "GO" General Office.

The applicant is requesting consideration for the vacation of a portion of the platted easement as recorded on Lots 1, 2, 3, & 4, Block 1, Mediterranean Office Park Addition. The applicant proposes expansion of the existing medical buildings. The applicant has applied for a lot split to reduce the number of lots from 4 to 3 (excluding a lot already developed = Lot 5) and reconfigure them. The Mediterranean Office Park Addition was recorded with the Register of Deeds July 28, 1997.

There is no water or sewer in the easement proposed for vacation. Because of the proposed development of the property and the properties adjacent to it there will be no need for the easement to be used for any future water or sewer lines.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities, Planning Staff recommends approval to vacate the portion of the platted 20-foot utility easement as described in the legal description with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time February 13, 2003, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved subject to the following conditions:
1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 2. All improvements shall be according to City Standards.
 3. Water Service to the site comes off of the existing water service off of Cyprus Street.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Water Service to the site comes off of the existing water service off of Cyprus Street.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **COULTER** seconded the motion, and it carried (13-0).

5. **Case No.: ZON2002-66** - This case was withdrawn at the applicant's request.

DEFERRED FROM MAPC ON DECEMBER 19, 2002, JANUARY 23, 2003 AND FEBRUARY 6, 2003.

6. **Case No.: CON2002-03 (Associated with DR95-8)** – Floyd Neitzel (owner); Mike Martin, Conoco-Phillips (agent) request a Sedgwick County Conditional Use to renew a Special Use Permit for a groundwater remediation system on property described as;

The Northwest Quarter of the Northwest Quarter of Section 11, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas. Generally located at the southeast corner of 31st Street South – 127th Street East intersection.

BACKGROUND: The applicant requests a Conditional Use to continue a ground water remediation process on .01 acres of a 38-acre, unplatted tract. The ground water remediation use, and the existing 20 by 24-foot metal building are defined as a "major utility" in the Wichita-Sedgwick County Unified Zoning Code (UZY). The application area is zoned "SF-20", which requires a Conditional Use for a major utility.

The ground water remediation process was approved in 1995 as a Special Use Permit (DR-95-8, see attached). DR-95-8 was approved prior to Conditional Uses existing in the unincorporated Sedgwick County under the UZY. DR-95-8 Condition Number Three permitted the Special Use permit for up to five years, with the option for the County Commission to grant a time extension, after a hearing by the MAPC.

The groundwater remediation system, including a soil ventilation system, was required by the Kansas Department of Health and Environment (KDHE) following a gasoline pipeline spill. The Special Use Permit DR-95-8 expired in 2000, and KDHE has not relieved the applicants of their responsibility to complete the required remediation. The applicants now wish to be in compliance with the UZY, and obtain the required Conditional Use. The applicants are unable to estimate the remaining time required to complete the remediation. The applicants ask that the Conditional Use be structured to expire once KDHE has approved the completion of remediation on the site.

An existing metal building on the site houses the remediation equipment, an unpaved drive from 127th Street East accesses the site. The application area, and the surrounding properties, is zoned "SF-20". The surrounding properties are developed with agricultural uses and some large lot residences.

CASE HISTORY: DR-95-8 was approved as a Special Use Permit by MAPC on July 13, 1995, and by the Board of County Commissioners on August 9, 1995.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20"	large lot single-family residences
SOUTH: "SF-20"	agricultural uses
EAST: "SF-20"	agricultural uses
WEST: "SF-20"	agricultural uses

PUBLIC SERVICES: 31st Street South is a two-lane paved arterial with a 40-foot half-width right-of-way at the application area. 127th Street East is a two-lane unpaved section line road with a 30-foot right-of-way at the application area.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this property as "Rural". The UZY lists "Major Utility" as a Conditional Use in the "SF-20" zoning district.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the Conditional Use request be APPROVED subject to the following conditions:

1. The Conditional Use shall permit a groundwater remediation system, including a soil ventilation system that utilizes a vacuum blower, pump, and other necessary equipment for the operation of the remediation process.
2. The Conditional Use shall permit a temporary 20 by 24-foot metal building for the purpose of enclosing the remediation equipment. The building shall be permitted on the 0.01-acre site.
3. The Conditional Use shall be valid until such time that the Kansas Department of Health and Environment (KDHE) approves the completion of remediation on the site. The applicant shall inform the Metropolitan Area Planning

Department in writing upon KDHE approved completion of remediation on the site. The building and all equipment shall be removed within 90 days of expiration of the Conditional Use.

4. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties surrounding the application area are zoned "SF-20" and developed with agricultural or single-family uses. The metal building housing the requested Conditional Use is not out of character with the surrounding area.

2. The suitability of the subject property for the uses to which it has been restricted: The application area could be used for residential or agricultural development without the requested Conditional Use. However, KDHE requires the applicants to complete the groundwater remediation on the site.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed conditions ensure that the Conditional Use will expire upon completion of the required groundwater remediation. The Conditional Use should not detrimentally affect nearby property.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Comprehensive Plan* does not specifically address groundwater remediation facilities. However, the UZC lists "major utility" as a Conditional Use in the "SF-20" district.

5. Impact of the proposed development on community facilities: The Conditional Use is serviced by one vehicle on a frequent basis, and should have no impact on community facilities.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **JOHNSON** seconded the motion, and it carried (13-0).

7. **Case No.: ZON2002-74** Mike Shell (owner/applicant); Robert W. Kaplan & Christopher A. McElgun (attorneys) request a Zone change from "LI" Limited Industrial to "NO" Neighborhood Office and "SF-5" Single-family Residential on property described as;

NO Zoning

That part of the NW 1/4 of Sec. 3, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas described as following: Commencing at the intersection of the north line of said NW 1/4 with the easterly right-of-way line of the Kansas and Southwestern Railroad (formerly the Missouri Pacific Railroad); The S89 degrees 58' 49"E along the north line of said NW 1/4, 773.70 feet, more or less, to a point 375.00 feet west of the NW corner of Lot 1, Block 1, Barefoot Bay 2nd Addition to Wichita, Sedgwick County, Kansas, as measured along the north line of said NW 1/4, and for a point of beginning; thence S00 degrees 01'29"W, 185.80 feet; thence N77 degrees 42'40"E, 408.00 feet, more or less, to a point on the west line of said Lot 1; thence N25 degrees 38'36"W along the west line of said Lot 1, 54.18 feet to the NW corner of said Lot 1; thence N00 degrees 01'29"E, 50.00 feet to a point on the north line of said NW 1/4; thence N89 degrees 58'31"W along the north line of said NW 1/4, 375.00 feet to the point of beginning, subject to road rights-of-way of record.

Gross Area: Containing 54,945.00 Sq. ft. or 1.26 Acres, more or less.

Net Area (less 50' R-O-W): Containing 36,205.00 Sq. Ft. or .83 Acres, more or less.

SF-5 Zoning

That part of the NW 1/4 of Sec. 3, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the intersection of the north line of said NW 1/4, with the easterly right-of-way line of the Kansas and Southwestern Railroad (formerly the Missouri Pacific Railroad); thence S89 degrees 58'49"E along the north line of said NW 1/4, 773.70 feet, more or less, to a point 375.00 feet west of the NW corner of Lot 1, Block 1 Barefoot Bay 2nd Addition to Wichita, Sedgwick County, Kansas, as measured along the north line of said NW 1/4; thence S00 degrees 01'29"W, 185.80 feet; thence S77 degrees 42'40" W, 76.22 feet; thence N72 degrees 49'20"W, 83.00 feet; thence S48 degrees 50'40"W, 133.00 feet; thence S26 degrees 20'40"W, 187.00 feet; thence S37 degrees 20'20"E, 615.00 feet; thence S48 degrees 01'41"E, 208.30 feet; thence S50 degrees 32'11"W, 77.61 feet, more or less, to a point on said easterly railroad right-of-way line; thence N39 degrees 10'02"W along said easterly railroad right-of-way line, 1432.06 feet to the point of beginning, subject to road rights-of-way of record.

Gross Area: Containing 241,740.00 Sq. Ft. or 5.54 Acres, more or less.

Net Area (Less 50' R-O-W): Containing 204,074.00 Sq. Ft. or 4.68 Acres, more or less. Generally located South of 29th Street North and east of Ridge Road

BACKGROUND: The applicant requests a zone change from "LI" Limited Industrial to "SF-5" Single-Family Residential and "NO" Neighborhood Office on a 5.51 acre unplatted tract located south of 29th Street North and east of Ridge Road. The applicant indicates that the zone change is requested to permit unspecified future development of the subject property.

The surrounding area is characterized by a mixture of uses with industrial uses to the west and south and residential uses to the east and north. The properties located south and west of the site are zoned "LI" Limited Industrial and are developed primarily with a cement manufacturing business. Most of the properties located north and east of the site are zoned "SF-5" Single Family Residential are developed with single-family residences. A portion of the lake located east of the site is zoned "LI" Limited Industrial.

CASE HISTORY: On January 11, 2001, the Subdivision Committee approved a final plat (SUB2000-107 - Barefoot Bay Estates Addition) for the subject property. The proposed plat subdivided the subject property into eight lots containing an average of two-thirds of an acre. The applicant requested an associated zone change (ZON2001-01) for one lot of the proposed plat to be zoned "NO" Neighborhood Office and the other seven lots to be zoned "SF-5" Single-Family Residential. The applicant indicated that the zone change was requested to permit an in-home office and seven single-family residences to be developed on the property. On February 22, 2001, the MAPC deferred action on the proposed plat and zone change at the applicant's request.

In September 2001, the zone change request was heard by the District Advisory Board (DAB) and MAPC, and the request received significant neighborhood opposition, primarily from residents of the Barefoot Bay neighborhood to the east who were concerned about the impact of the proposal on the safety of the lake due to additional boats from the new lots accessing the lake. The DAB and MAPC voted to defer consideration of the request for one month to allow for more neighborhood input.

On October 1, 2001, the DAB recommended denial of the zone change request. On October 11, 2001, the MAPC recommended approval of the zone change request subject to a Protective Overlay that limited density to eight residential units, limited office uses on the "NO" tract to home occupations with no more than four outside employees, and subjected the property to the "Covenants, Conditions, and Restrictions" of the Barefoot Bay neighborhood. The applicant agreed with the recommended conditions of approval.

Subsequent to the MAPC hearing, protest petitions representing over 80% of the property within 200 feet of the subject property were received. On November 6, 2001, the City Council denied the zone change request. The applicant appealed the City Council decision in District Court. On November 26, 2002, the District Court upheld the decision of the City Council. The applicant appealed the District Court decision to the Court of Appeals, and the appeal is pending. The applicant subsequently re-filed the zone change request, which is treated as a new zone change request per the re-filing provisions of the zoning code that allow for a new zone change request to be filed one year or more after the original request was denied.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5"	Single-family residences, lake
SOUTH: "LI"	Concrete manufacturing
EAST: "SF-6" & "LI"	Single-family residences, lake
WEST: "LI"	Concrete manufacturing, various small industrial businesses; manufactured homes; single-family residences

PUBLIC SERVICES: The site has access to 29th Street North, a two-lane arterial street recently paved to the county standard along the site's frontage. Current traffic volumes on 29th Street North are approximately 500 vehicles per day. The 2030 Transportation Plan estimates that the traffic volumes will be approximately 5,600 vehicles per day in 2030. The city's Capital Improvement Program contains a project to widen 29th Street North to four lanes between Hoover and Ridge in 2008. The Subdivision Committee approved two access drives to Lot 8, a 250-foot wide lot proposed for "NO" Neighborhood Office zoning. These two access drives are in excess of the number of drives recommended by the City's Access Management Policy; therefore, Planning staff will be recommending that the MAPC reduce the access openings by one when the final plat is considered. Public water and sewer service are available to be extended to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low-Density Residential" development. The "Low-Density Residential" category provides for the lowest density (1 to 6 dwelling units per acre) of urban residential land use. The portion of the subject property proposed for "SF-5" Single-Family Residential zoning conforms to the Land Use Guide. The Office Locational Guidelines of the Comprehensive Plan state that offices should generally be located adjacent to arterial streets and that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The location of the requested "NO" Neighborhood Office zoning is adjacent to an arterial street, and while the location of the requested "NO" Neighborhood Office zoning does not serve a transitional purpose, the requested "down zoning" from "LI" Limited Industrial to "NO" Neighborhood Office is more in line with the Land Use Guide than leaving the property zoned "LI" Limited Industrial.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and subject to the following provisions of a Protective Overlay District:

1. If developed with a residential use, the density of the subject property shall be limited to 8 dwelling units on no more than 8 lots.
2. Office use on the portion of the subject property zoned "NO" Neighborhood Office shall be limited to a home occupation as permitted by Section IV-E. of the Unified Zoning Code, except that up to four persons not occupying the dwelling unit may be employed in the home occupation.
3. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0230 or as otherwise agreed to from time to time between the owner of the subject property and the Barefoot Bay Owners' Association.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of uses with industrial uses and zoning to the west and south and residential uses and zoning to the east and north. Residential and low-density office use of the subject property is more compatible with the existing residential zoning and uses that are predominate in the area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial and could be developed with industrial uses. In this instance, the applicant is requesting zoning which will significantly increase the restrictions on the use of the property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Many potential detrimental affects on nearby residential properties from increased traffic, noise, lighting, trash, and other detrimental affects typically associated with non-residential development should be decreased by the requested "down zoning", which will restrict the use of the site for numerous commercial and industrial uses that typically are incompatible with nearby residential uses and are currently permitted uses on the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low-Density Residential" development. The "Low-Density Residential" category provides for the lowest density (1 to 6 dwelling units per acre) of urban residential land use. The portion of the subject property proposed for "SF-5" Single-Family Residential zoning conforms to the Land Use Guide. The Office Locational Guidelines of the Comprehensive Plan state that offices should generally be located adjacent to arterial streets and that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The location of the requested "NO" Neighborhood Office zoning is adjacent to an arterial street, and while the location of the requested "NO" Neighborhood Office zoning does not serve a transitional purpose, the requested "down zoning" from "LI" Limited Industrial to "NO" Neighborhood Office is more in line with the Land Use Guide than leaving the property zoned "LI" Limited Industrial.

SCOTT KNEBEL, Planning staff presented staff report. This is a request for the zoning to be changed from the "LI" Limited Industrial district to the "SF-5" Single-family Residential and "NO" Neighborhood Office districts. The property is located south of 29th Street North and east of Ridge Road, and it is approximately 5 1/2 acres.

It is kind of an odd shaped tract that is the northwest corner of a lake that was created by the removal of sand and gravel. The property was previously developed as a recreational facility for Ritchie employees, which own the area to the south of the property that is currently a concrete or asphalt, or maybe both, a plant associated with Ritchie Company. There is some industrial zoning to the west, which is developed with numerous small uses including some mobile homes, and some residential use. Then to the east and to the north, it is not very well reflective to the north on this slide, are residential uses. This area up in here is much more developed today than it was three years ago when this picture was taken. Let me show you pictures of the site. This is the property looking to the south. This is the northwest corner of the property looking to the south. This is the northwest corner of the property looking to the southwest. Then this is the eastern portion of the property looking southeast, and you see the concrete plant to the south across the lake, and then the residences, if you can see through the glare, to the southeast and to the east. Residences to the north and to the northeast, and then to the northwest is some mixture of residential and office developments, and then to the west there is not much that you can see because of the vegetation.

The applicant originally submitted a plat for this property, which is still on file, which is called the Barefoot Bay Estates Addition. This plat would subdivide the property into 8 lots. The applicant requested that one of these lots be zoned Neighborhood Office. I do understand from talking to the applicant's attorney this morning that they do intend to revise that plat to a 6 lot plat as opposed to an 8 lot plat. At the time that the plat was submitted, the applicant indicated that the zone change was requested to allow 7 single-family homes and 1 in-home office, and I guess that is now going to be 5 single-family homes and 1 in-home office. This request was considered in 2001 by the District Advisory Board who recommended denial, by the Planning Commission who recommended the request be approved subject to a Protective Overlay that limited the number of residential units on the property, and limited the office use to a home occupation, and required the property to be developed under the covenants and conditions of the adjacent Barefoot Bay neighborhood. The City Council subsequently denied the request, which was appealed to District Court, and the District Court then upheld the decision of the City Council, and the applicant has a pending appeal with the Court of Appeals on this.

Under the provisions of the Unified Zoning Code, the applicant is allowed to re-file a zone change request one year after the last advertised public hearing on a request. So the applicant has done that, and this request needs to be treated as a separate request, and we need to go through the same process of due process that involves public notifications, and public hearings, and so forth, as we did the first time.

I go back to the "Land Use Guide". The property that you can see on the "Land Use Guide" is identified as appropriate for low density residential uses, with which the zone change is consistent with the exception of the Neighborhood Office request, but the "Neighborhood Office" is significantly less intense than the current "Limited Industrial" zoning of the property, and therefore, staff feels like it is at least more consistent with the designation of the "Land Use Guide" than the present day zoning.

Planning staff is recommending that the request be approved subject to platting the property within one-year and subject to a Protective Overlay. I apologize the way this is written. It is a little bit different than what staff is going to recommend, and what the applicant is agreeable to. They contacted us this morning, and I will go through that a little bit. On Item #1, it indicates that the density should be limited to 8 dwelling units, and we would like to change that to 6 dwelling units on 6 lots. On Item #2, and Item #3 there are no changes there. On Item #4, and this is one change that the applicant is proposing, and they may have better wording than I do, and staff is agreeable to it, and that is that the property would be limited to a total of 3 boat docks with 2 boat slips per dock and a total of 1 watercraft per lot that could access the lake at any given time. Our recommendation is based on the findings that are listed on page 4 and page 5. If you have any questions of me I will be glad to answer them. I should mention that the District Advisory Board did hear this request Monday night and recommended unanimously that the request be denied.

BISHOP With Condition #3, is it your understanding that if that Condition was complied with then any purchasers of those lots would have the same responsibilities and rights towards the Homeowners Association as any of the other homeowners?

KNEBEL Yes, that is my understanding.

BISHOP So any dues or maintenance work that had to be done on the lake and so forth would fall on those properties?

KNEBEL Yes, and Joe Lang mentioned that I also should mention that you have a number of letters from residents in the neighborhood that were passed out to you, and also a record of the City Council action that was taken concluding their findings that they made when they denied the previous request.

BARFIELD This is a new application. The only thing different between this application and the previous application is the number of units we are talking about?

KNEBEL Basically, the things that are different are the number of lots and the restriction on the number of watercraft. That was not a part of the last request.

BARFIELD This was before, and I think a lot of the opposition was to the home occupation?

KNEBEL I think the biggest opposition was to the number of boats that would be allowed to be increased on the lake from additional residential lots, but there was some opposition to office use of the property as well.

GAROFALO Mr. Lang, let's say this was passed now, and the appeal comes down or the judgment on the appeal comes down that they uphold City Council. Where does this application go? Then it goes away?

JOE LANG, First Assistant City Attorney, City of Wichita As the court case stands now, the rezoning is denied, and if the Court of Appeals affirms that, that is the status of that case, and the rezoning is denied. But, any applicant has a right to come back a year later with a new application if they have been denied, so they had started that process already, and if the court denies them, and you grant this, and the City Council approves the grant, then they would have this. If the City Council denies this, then they would probably have two cases up for appeal.

GAROFALO In other words, this would go forward no matter what the appeal result is?

LANG Right, now it would be up to the applicant if the City Council, and if you would recommend to the City Council, would approve this application whether or not they would want to proceed with the court case. They may have enough of what they want and not proceed with the court case, but right now we have the District Court telling us that the City Council was right and this has been denied.

GAROFALO So, this case today, this item today, would proceed on just like the first one did, except we don't know what the City Council would do.

LANG Yes, that is correct. This case proceeds as a new case and will be treated as a new case.

BOB KAPLAN, with Kaplan, McMillan and Harris, 430 N. Market, Wichita, KS 67202-02074 I was retained in this case. I was not in this case, ladies and gentlemen, initially, and not having been in the case, I was not present at the initial District Advisory Board hearing, where this was initially denied. I attempted in reviewing the record, in order to appropriately represent Mr. Shell, to determine the basis for the denial at the first District Advisory Board meeting. I went through the minutes, and I had not a clue as to why they denied it from the minutes.

I found out Monday night, because I attended the District Advisory Board meeting Monday night. It is the lake. It is all about the lake. Under the Homeowners Association rules they allow three boats per lot. At the time that we presented it, Mr. Shell had platted eight lots, now reduced to six lots. That is 24 boats, and they didn't want them. I suggested at D.A.B. that they simply change their rules. It is a private lake. It is a private treaty. They can do anything they want to do as far as forming rules or covenants, controls to that lake, and they are going to be binding on Mr. Shell and on this estate property. The answer to that was, sure we could do that, Mr. Kaplan, but if we do that, it is going to be binding on us too, and we don't want to put restrictions on us. We just want to put restrictions on your client.

I can fix that too, and I can fix that with rules that apply only to Mr. Shell, to which he is agreeable, and that is what we call a "Protective Overlay", and I communicated that, knowing what the problem was, to Mr. Knebel. The adjacent land, this plat which we provided, was initially 8 lots times 3 boats equals 24 boats. We will now make 6 lots out of it; five single-family residences and one in the "NO" Neighborhood Office zoning for a home occupation for a real estate developer, and that will be subject to the standards of the home occupation and will be governed by that, and they will have 3 docks and not 8. We will have 2 boats per dock which gives us a total of 6 boats. So we will limit ourselves to only 6 boats instead of 24, about 1/4 of what we originally asked for. We will limit the lake usage. There will be no more than 1 watercraft per lot on the lake at any one time. The maximum lake usage will be 6 watercraft maximum.

Those 6 lots, Mrs. Bishop asked about it, will come into the Barefoot Bay Homeowners Association. They will come in on the same terms and conditions as the Barefoot Bay current lots, and they will be assessed dues in the same fashion. We are going to have about a third of the rights that the other homeowners are going to have, but since that apparently was the reason for objecting, well, one gentleman said that these single-family homes, because they are smaller lots, he said that is going to depreciate my property value.

It is currently zoned "Limited Industrial" with a whole lot of uses, a lot of them not very compatible with neighborhoods, and I think the rationale, these folks have done their homework, they know what they are doing. I think what the thinking is that you leave it "Limited Industrial" and it is not going to develop, and they might be right. It never has developed. What I did, I found out from talking to some D.A.B. members, they don't get a lot of this material. Planning gives it to them, but they don't seem to have it available, and you guys don't need this. You know Policy #10, and the only reason that I am putting it up is not to talk to you about Policy #10. You know it better than I do. You deal with it every week. The reason I am putting this up is that you cannot find one criteria, not one that I submit to you on that Policy #10, except neighborhood opposition, which would be a reason for denying this.

I am going to sit down because Mr. Shell wants to talk. I can take my hits, and I can take my losses, but I sure I had to take them on a case going from "Limited Industrial" to single-family quality homes with all the concessions, all the boat concessions, everything else. This is a meritorious application, and this merits your recommendation for approval. I don't know what the Council will do with it. I told Mr. Shell I would leave him five minutes, but I didn't quite make it.

GAROFALO Have you discussed this with the Homeowners Association?

KAPLAN There have been many discussions and Chris McElgunn really represents Mr. Shell, and has handled the negotiations with the H.O.A., and I think Chris can probably tell you more about that than I can. Yes, there have been discussions, and I have not been privy to them but every time I hear about one, they said we said this and Mr. Shell says no. Mr. Shell said I offered this, the H.O.A. says no, and it has been a he said, she said, and I am perfectly amiable to working with the H.O.A. and trying to come to accommodation. I think this ought to be done.

CHRIS A. MCELGUNN with Klenda, Mitchell, Austerman, Zuercher, 301 N. Main, Wichita, KS 67202 There has been discussions going back and forth, and we have not been able to come to an agreement. There is some pending litigation, because there have been some other attempts to change the lake rules, and there have been prior judgments. We have communicated an offer about a month ago with some indication that it would be favorably accepted. It was our understanding that there was no action that had been taken for the Association to have a meeting to formally address that offer. We felt like what was being done was that the offer was not going to be considered until such time as this body weighed in, because if you denied it, they were not going to consider the offer. So, as of yesterday we pulled that offer off of the table, as part of the litigation, with the intent that we would propose it as a "Protective Overlay", and that gives you our intention of what we would agree too. To solve this issue, then, it would be up to the homeowners as to how much they want to oppose it. But we didn't feel like it was being fairly treated or that there was any action to give it fair consideration. We felt let's make it the "Protective Overlay" and basically put our cards on the table so everybody knows, and it could be voted on by this body.

MR. MIKE SHELL, 5243 Spicewood Lane, Frisco, TX 75034 First of all, I am not the monster that lives in Texas. I live in Frisco, Texas. My wife and I are the owners of the property. There are four lots that look directly at this property when you walk out your back door. One of those homes was ours, so when this property came up for sale, I was concerned. I did not want any mobile home or manufacturing plant. I bought the property feeling that it be in our best interest that it be more homes.

We have been going through this for three years. When we first met with Baughman to address this project there were 11 lots proposed, that with the homeowners, my fellow neighbors, that wasn't acceptable. We then went to 8 lots. That wasn't acceptable. We recently went to 6 lots. Then it became a boat use issue, so we reduced that recently addressing the offer on the table. I received a phone call in January from Jay Russell, who is a friend of mine, who said he had a discussion with the President of the Homeowners Association, who is here, Gerry Cook. Gerry could not talk to me because of pending litigation, but Gerry was confident that if I would go all the way down to 6 lots, with 3 boat docks and only one boat access per lot versus three, that he felt confident that he would put that to vote in the Association. So I called Chris McElgunn and said that is great, our objective is not to do this industrial, our objective is not to devalue the homes of Ridgeport, Reflection Ridge and everything around it, let's do it. We have not heard a word back.

My last thing to address is the response from Barefoot Bay on the second paragraph, page one, simply stated that limited industrial does not present the burden of hardship associated with accessing this lake. Judge Vining of the Sedgwick County District Court ruled last year that whether it is light industrial, commercial, or residential, the owners of one lot or 11 lots have the right, according to the law, to access that lake. So I could put an application before you that would never go to City Council and say that I want 6 industrial lots. I could have 6 businesses there and all of their employees could use the lake with 3 boats each, so that is one thing to address.

As far as being upscale, the proposed price of these lots is substantially higher, almost three times, than what most of these homeowners paid for their lots. I am fairly confident that you are not going to spend \$150,000 on a lot and put an undesirable home there. Our offer included that we would also move lots into the Homeowners Association. They would pay dues. They would be bound by the same building restrictions and that a member from their Association would be on the building approval plans, and they would approve all of the home plans. I feel like Sandy and I have absolutely bent over backwards to protect what used to be our neighborhood, but we don't get any response. There are some claims here that they have made an offer to buy the property. I have no offer, and I have never had an offer in writing or otherwise from any member of them to buy the property.

The letter on the very back of the packet written by Mr. Bowman, who is probably here I think, which by the way sits on the D.A.B. committee and was neighbors with Mr. Martz for several years, therein might lie part of the problem, in which he says that this is a personal vendetta by Sandy and I. If this were a personal vendetta by Sandy and I, it would be a mobile home dealership. So I would submit to you that this is the best use of the property for Ridgeport and for the homeowners that look at this property and for anyone in the area. That it is not best suited to be "Light Industrial", and I just wanted you to know that it was not our intent to damage the neighborhood or to cause them issues.

Currently the property you saw across the street [whose owners] that drive by this property everyday, not across the lake but literally drives by it everyday to enter their neighborhood, is Ridgeport, and what you saw there was Ridgeport, at the point of this photo was very, very, underdeveloped. There are about 176 lots in there, and the developer is Jay Russell. I have talked to some of the homeowners just a few days ago. They are adamant about the fact that they know it would not be in their best interest for their property value to drive by that everyday for that to be "Light Industrial." No one in Barefoot Bay drives by that everyday. When I sold my home, I explained to the buyers that it was zoned "Light Industrial," and that I own the property, and it was my intent for their protection to make it 8 lots at the time.

GARY SNYDER, Property Owner, 2721 N. North Shore, Wichita, KS 67207 My property directly faces the subject property before you. I was pleased last year when you approved the zoning. Rather than go through all of the things that have been addressed today, I see a 25% reduction in the number of houses and a 75% reduction in the number of the boats that can be used, and I am in favor of approval of this application. I think three years is a long time to develop property, and I am certainly in favor of this

application. What I am going to show you here with this overhead picture is basically my balcony. I have 20 windows in the back of my house and they all face this property, and I don't think there is any other property that will be more affected by what happens on this proposed property to be developed than mine. So I wanted to make sure that you are aware that I am in favor of this development, and I think six boats out a 153 that we are now allowed is less than a 5% increase. Not all of us are on the lake at one time. I guarantee you that we are safer there than I would be at Cheney Lake or El Dorado on the weekends. I would be glad to answer any questions.

MIKE GEORGE, 2717 N. Northshore Circle, Wichita, KS 67207 The rear of my home, I live right next to Mr. Snyder. The rear of my home also has viewing capability to this property. I want this Commission to know that we are very much in favor of this case.

BARFIELD Are you a member of the H.O.A.?

GEORGE Yes, I am.

TOM DOCKING, with Morris, Laing, Evans, Brock and Kennedy, 200 W. Douglas 4th Floor Wichita KS 67202-3084 I am here representing the Barefoot Bay Owners Association in opposition to today's application. I do not intend to give a full-scale analysis of this matter. The MAPC has heard this thing about a year ago, and you have in your packets numerous letters from affected homeowners in opposition. We have a handful of homeowners whom, at my request, have agreed to make brief, polite, and hopefully constructive remarks for your consideration to voice their opposition to the application. The application, except for these items reducing the number of lots and the number of boats that were aired today is the first time we have heard about this offer at the same time that you heard them and that is today.

I represent the Owner's Association, and I have not had any communication from the applicant or the applicant's Counsel about any terms of settlement, so if there is discussion about we are assured that we have some indication that the Homeowners will approve the following deal. They are not going through Counsel. I don't know whom they are going through, and I am not aware that there is any ground swell in favor of what they are talking about. We stand in opposition to the current application. One thing that has changed, I should correct myself, from last year is that the virtually identical application that was approved by this body on a split vote was reversed in a unanimous decision by the City Council and that decision was upheld by the District Court. Now you are duty bound to consider the new application on its merits, but I do suggest to you that there are two judicial bodies ahead of you that have already said a denial of the application is appropriate in this circumstance.

We had a year ago over 80% of the affected homeowners filing petitions in opposition to this application. We will see if we have 80% again this time. You will have a substantially majority. I can assure you. It was pointed out at the D.A.B. hearing on this matter that homeowner's opposition is not a relevant factor, and I ask you to assess that. Whether it is or not, the concerns that the homeowners have are reflected when they express their opposition. These certainly are factors that the MAPC should consider. It comes down to the number of lots, the safety issues for the boats, and the fact that these homeowners were assured that there would be no more than 51 developed lots at Barefoot Bay. They were assured of this in writing and verbally when they bought their lots and spent the money to build their homes, and now the applicant is seeking to go back on the deal. I am perfectly prepared to answer any questions that you may have, and if not, I will turn it over to others.

GAROFALO Are you telling the MAPC here that the Homeowners Association will not consider the Protective Overlay that is proposed by the applicant?

DOCKING No, I am not saying that. I would advise the Homeowners Association to consider any responsible proposal that would settle this matter. I represent them, and I have not received any of that. What I am saying is that if they want to make a proposal, I don't think a public hearing in front of the MAPC is the first time that you want to air it to the Homeowners.

GAROFALO It appears to me that most of the opposition to this is not based on the land use so much as on the water usage, the number of boats and all that, is that a correct assumption?

DOCKING This is a subjective judgment and would say that the water issues probably are about equivalent to the land use issue. They were assured in writing and verbally that there would be no more than 51 lots total and that is what they have now, and they want the people to stick to the deal that was made at the time. So I think it is fair to say, and I don't want to discount the importance to Barefoot Bay of the land use issue, but clearly the lake issue is very important too.

JOHNSON Since that is industrial zoning, and say the applicant decided to make 6 industrial lots out of that, could you guys keep them from putting three boats per lot on there?

DOCKING I don't know. That is a novel idea. We had a threat to put in another cement plant, and today we heard about a mobile home park and six industrial lots. I am not sure what the current rules are.

JOHNSON It is zoned "Light Industrial," so it could be used for those purposes.

DOCKING We don't object to uses allowed in "Light Industrial" use.

JOHNSON But could you keep them from using the lake?

DOCKING We are interested in limiting the number of boats on the lake and the number of developed lots. Now, I would have to go back to the original covenants to find out if the applicant is correct that he could divide into 6 industrial lots when he can't do six homes. My guess is that he is probably right because "Light Industrial" probably allows him to do that, but I don't think that is what he wants to do with the land. I think what he wants to do is to build small homes with multiple access to the lake, and that is why he is here this year. I don't think he wants to put a trailer park in either.

MARNELL You said that the applicant is going back on his promise, both verbal and in writing, having to do with the 51 homes.

DOCKING I don't think it was the applicant who made those promises. I think it was Ritchie, his predecessor.

MARNELL This seems like an issue that would be with Homeowners Association and Ritchie in that regard.

DOCKING All I am saying, and what I said was true, they were assured verbally and in writing that this would not happen.

MARNELL I understand that emotional issue and it is probably a legal issue which would be in your area of expertise, but that doesn't appear to me to be a land use issue. That is one between them, the people he made the covenants with, and this is a separate issue from that.

DOCKING I don't dispute that, I think it is a factor you ought to be aware of.

GERRY COOK, 6111 W. 29th Street, Wichita, KS I presently own a lot that is 4.3 acres, and I have lived there about 5 ½ years. All of the lots on the Second Addition are along 29th and Hoover. I believe the smallest lots are two acres. The first time I basically heard that the Ritchie cabin was for sale. I basically heard that Mike Shell bought it. We confronted Mike about it, and Mike came to one of the Homeowners Association meetings, and basically said that he bought it to assure that nobody would develop on it, and assured the Board that, and then later on we found out that he showed us a plot with 12 lots on it and said that he was going to develop it. We all about had a heart attack. My personal opinion is the only person who will gain on this will be Mike Shell, and that will be financially. He talked about what the lots are worth. Two doors down to the east of me a lot was sold for \$200,000, and it was purchased and it is a very long lake and very much lake frontage. It is 2 acres.

My problem that I have with this is that I have been on the Board for three years. I have been president for two, and vice-president for one, so I see a lot of lake issues things that come up. In the summertime that lake looks like a whirlpool. Currently I ski and wake board, and a lot of times I don't go out because the water is so rough it is dangerous. On holidays we patrol our lake. We get homeowners to help patrol it, usually in two and three hour increments, and during that period we have a lot of problems, and that lake gets used heavily. Currently where my house is positioned I am kind of between two points. I see both sides of the lake, and just in front of my house we have rules that only two boats can go through the center, and I have seen four go through that opening, and that opening is not very big, and I think to add 6 more boats on the lake. You do have a lake issue.

We have had some accidents on the lake, and I would hate to think that one of my kids would die because we are not protecting the homeowners and our investment. Another thing that was mentioned was, currently right now Mike has been approved for one boat dock and three boats. Basically what he is trying to do is profit off of this and put 6 lots on and have six boat docks. If that is what he is proposing today, my problem with that is you always have guests that come and they can currently use your watercraft. Believe me, when guests come out we have a problem. Now you have added 6 more problems to our lake. I am afraid of what is going to happen. My biggest investment I have ever spent is in my property, and I want to protect it, and I want to protect every neighbor out there, so I have a problem with that.

The last thing he said, that he mentioned, that I spoke with Jay Russell and told Jay that if we had 6 lots and three boat docks it would be approved. I told Jay that we would have to take it to the Board to get it approved. Jay called me back and I told him that legal Counsel told me that I couldn't talk to anybody, so I stayed out of it, and so I never had said that it would be approved, and I want to make sure that is clear.

I know a lot of the homeowners, and I look at this like my investment on my house. Currently my lot is 4.3 acres, and currently he is trying to put 6 lots on a 5 ½ acre tract, and those lots are going to be so small they will not be consistent with the lots on our side and the only person that gains is him. I do look at the lot, and I am one of the lots that do look at that property, and so I hate to see that we have a beautiful thing going there, and I hate to see something like this ruin our lake. This is a big deal. Every homeowner out there that I know of, because I am on the Board I should not say everyone, but the biggest majority, opposes this thing to happen. So I ask you members to take a strong look at it, and this is a life issue. We have an issue right now with the problem that we have with the number of boats we have on the lake.

MCKAY Can you show us your house on that picture?

COOK I am right here about 2 lots.

MCKAY How far are you from Hoover Road?

COOK About 2/3 of a mile west of Hoover Road.

MICHAELIS Mr. Cook, you have made emphasis, and the emphasis has been made last year as well, as everything that we see in writing here about the safety issue. Are you currently taking any steps, the way you just stated it now you already of a serious problem, are you taking any steps to reduce that problem?

COOK We are trying to do some lake rule changes, and basically Mike has filed suit against us on that.

MICHAELIS So you are going to change the number of boats that the people already there can have?

COOK Well, we have two potential problems that could happen. Later down the road, after a 10-year period, the Second Addition lots could subdivide, and we are trying to stop that from ever being subdivided, and basically the number of boats because of the issue. This is almost a two-part deal. Basically we have a lake issue now, and we are trying to stop it. We don't want to make it any worse right now than it is presently happening, and we see a future problem, and we are trying to head that off too. We are trying to hit two birds with one stone right now.

DAVE GORDON, 2614 N. Northshore Court, Wichita, KS I am opposed to this zone change request. I want to go through a few things. I bought my house for water skiing, and that lake barely accommodates that right now. We do have patrols, and I am going to try not to repeat some of the things that Mr. Cook had mentioned. It just barely works right now. I am concerned that any more boats at all on that lake will cause an increase in the danger, and the safety will be an issue for my family. I want to make sure that we don't play games with this boat thing. The truth of the matter is that you don't drive three boats at one time. The increase in the number of boats that would be out there with 6 lots would be about 13%. So you are talking about a 13% increase in boat usage. Don't be fooled by the fact that he is going from 24 down to 6. The reality is that he is going from 1 up to 6. Let's make sure that our thinking goes in the right direction there. I am very concerned about the safety.

It has already been mentioned about the verbal and written promises, so I am not going to go into that, but that is a huge issue that lake and the effect that it has on all of our properties and all of safety. Also, the lot sizes are a lot smaller. Gerry mentioned the square footage of the lots itself, but what I would like to show you is that this entire section is not developable. It is very, very, thin, and there is a railroad track that runs right there, so all 6 are going to be put within this little corner. Now, if you look at the square footage of the lake, which we all see when we are driving out boats, the average lot in Barefoot Bay #2 if it was 12 inches long, Gerry and all those other lots out there, and if you put 8 lots out there the amount of lake frontage that those 8 lots are going to have is equivalent of one inch. So you have 12 inches now and you are going to reduce it to 1 inch, and if you turn into 6 lots you are going to reduce it to about 1 ½ inches, so to give you a visual representation about what we are talking about in terms of congestion that is what we are referring to.

We are all educated people, and we knew when we purchased our lots that this was going to be limited industrial in that corner. That did not upset us. The concrete plant across the railroad tracks don't bother us. We are used to looking at it. We are used to having it relatively spread out, so that doesn't bother us. What does bother us is congestion of a bunch of lots in one corner and taking over a lot of the use of that lake. There are plenty of options to develop that property. He could easily put in a small office park. He could put in a restaurant that would have a beautiful lake view. I am not trying to say that he doesn't have the right to develop that corner.

The only reason that it has not been developed already is because Ritchie wanted to use that for his own personal skiing, and he wanted to keep it nice for himself, and for the rest of us out there. That is the only reason it is not developed. There are developmental purposes out there that do not require dividing us out into a bunch of lots and turning it into residential.

The other thing I want to point out is that Mr. Kaplan talked about Policy #10 and those golden rules, and I quickly looked at those while he was speaking and rule #3, #5, and #7 are not talking about the neighborhood resident's opposition. They are talking about the restrictions that could detrimentally affect the nearby property that has already been demonstrated to you. Number 5 talks about the relative gain to the public safety, health and welfare. I think the reality is that it is going to be a public loss. We are reducing the safety. We are not improving it. Number 7 talks about the development and the community facilities, and we have already referred to that one as well. The bottom line, like Gerry mentioned, is this is opposite what you guys are used to. You are used to people complaining about developments going the other direction. This is a unique situation that requires some unique consideration. The bottom line is that this will harm the immediate community to the benefit of one individual so that he can make more money, and I don't that is why to approve that. I think you should oppose this request.

CHAD HOSFORD, 2626 N. NorthShore Ct., Wichita, KS I am opposed to this request. I am a new homeowner, and I had lived in the residence approximately 15 days after City Council made their last judgment to deny. I paid a very, very high premium for my house and for my lot, and I have lived there for 4 months now. I am self-employed, and I run a summer business, and I do not have time to go to the lake to fish and ski like I used to prior to my business. I decided it would be a good investment for me because it is in the City and it has very limited access unlike Cheney and El Dorado where I have had several incidents with other boaters and jet-skiers. I based the decision, and premium I paid for my home and my lot, based on 51 homes in the community, never any question about there being anymore than that. When I purchased my home this was an issue my real estate agent brought up, and like I said, we did actually negotiate the terms of our contract pending the outcome of this, and we purchased our home, like I said, after City Council denied this.

On the lake, I am a fisherman, and adding 6 more boats to the lake, and I have already, and my property, have put a sizable amount of money in my backyard because I have sand erosion, which is created by boat traffic, jet-ski traffic, washing the waves up on the shore, and I need to make a big investment to redo my shore line, and it only takes one boat to do that. I feel that because I paid such a high premium for my lot going into it knowing that it is 51 homes, also knowing the current market appraisal of my house was done on the houses in the area, and if there was smaller homes to go in this area, the next time I go to resell my home they would do an area evaluation, and my lot would probably be worth less because the homes that they are proposing are on smaller acreage.

I do agree that if he does develop the property there are a lot of good ways to develop it light industrial whether it be a restaurant, or something of that means would have a nice view. I am here in opposition, because I am a new tenant to the neighborhood, and it does directly affect me. To speak on the safety issue as well, this is an exclusive area as far my knowledge, you cannot jet-ski, you can do limited jet-skiing but you cannot water-ski on any other lake in Wichita, which is one of the reasons I decided to purchase this property because it is a long drive to Cheney and there are several accidents that you hear of at Cheney. There is a safety issue that I have with this lake is because when you do water-ski you take up a large amount of the lake, and you are going about 20 to 25 mph. Adding another 6 boats to the lake is obviously going to be a safety problem, and that pretty much is my opposition.

LARRY BEDORD, 2606 NorthShore Court, Wichita, KS I am opposed to this request. I don't want to repeat what has been said before, but I do want to weigh in that I am a homeowner, and I bought the lot that I felt that I had the promise that there would be a limit of 51 lots, and the 3 boats each. I think that with the use of the lake that has been described before it is obvious that with water-skiing, jet-skiing, and fishing we have plenty use of the lake. We don't need any more boats on it. So I feel a little bit short-changed by all of the sudden having more. I guess as a layman and not a lawyer I can't address whose claim comes first there, but since there is litigation pending, as I understand it, about this, I would like to see this not allowed until that litigation is finished.

KAPLAN I don't want to spend my two minutes discussing details because I hear from the speakers, and Mr. Shell says that is not right, and we could go on for hours. Let me correct a couple of things. I don't know what you are going to do, but whatever you do,

you have to do it based on a proper statement of what the law is. Mr. Docking tells you that the court said that this land use is appropriate. That is not an issue that goes to appellate court. Appellate courts are not planners. They don't do land use. What goes to a court to review is whether or not the decision of the governing body was so arbitrary and so unreasonable that it cannot be upheld. That is what the court decides. The court decides the reasonability of the decision. It does not mean that the court agrees with the decision or that the court determines the land use. They do not. You appeal a decision under the statute on the basis that it is arbitrary, and that it is unreasonable, and that is the basis on which you ask the court to reverse it, and that it is the light on which the court looks at it, not at the land use issue. Frankly, that was just a misstatement and you shouldn't go forward thinking that the court heard this land use, and said it was appropriate. The court heard the land use, and did not reverse the Council. The court did not find that it had reached the level of arbitrariness that it required reversal.

If this was going to turn, and it doesn't turn, the voice of the neighborhood is important. It is a factor. You can't decide on that alone. I guess if that was going to be the case, there is 178 lots up here, about 1/2 of those are developed. There are about 80 or 85 people in this area, none of whom are opposed. Those that we've talked to favor it. I guess I should have bused 85 people down here to say we support it if that is the basis of the decision. But that can't be the basis of the decision either. It has to be a land use decision. A land use decision is not a lake issue decision. That lake can be controlled with their covenants, with their rules, and with their regulations.

Mr. Docking said that this had not been conveyed. I did not make a booklet for this like I usually do. Here is a letter dated January 17th. Mr. Christopher A. McElgun sent to the attorney for the Homeowners Association. It was not Mr. Docking. It was Mr. Pat Murphy, who was representing the H.O.A. and the litigation in this case. These covenant issues have been litigated already in two lawsuits. If I wanted to talk about lawsuits, the court has found in Mr. Shell's favor twice on the covenant issues. This letter was sent the 17th of January, so nobody should tell me that they don't have the proposal that was made today. They have had it for 1 1/2 months. As far as those Policy 10 issues are concerned, when you talk about the public, the greater good of the overall public, people misunderstand that. You don't misunderstand it because you do this every week. It is not that, that issue that item, Policy 10 issue is talking about the public at-large, the City at large interest. That is what you do as planners. You don't decide on the basis of a neighborhood issue. You decide City at-large; although, you consider neighborhood issues.

If I came up here, which I often do, and I said that this is "SF-5", and I want to change it to "LI". You would chase me out of the room. I wouldn't have the guts to make that kind of application, and you wouldn't approve it. I go from "LI" to "SF-5", and they don't want that either. This is an absolutely meritorious application, and it really warrants unanimous support. I don't know what is going to happen at the Council, but I don't want you to be influenced by the fact that the District Court said that I can't reverse it. That's a whole different rule of law. It is not a land use issue, and you are dealing with land use, and I repeat again, you are not dealing with lake use you are dealing with land use. I don't even think the lake use issue is appropriate, but it certainly has been the focal point of this case.

GAROFALO With the reduction to 6 lots, how big would these lots be, each?

KAPLAN With 6 lots I think probably about acre lots, which I understand, which are as big or bigger than most of the lots in Barefoot Bay. Some of the Barefoot Bay lots are bigger, but most of them are smaller. This little half railroad right-of-way that they were talking about, that is a very small portion of the total acreage. It is not a significant portion. Mike is telling me that he would have acre lots, and I have to accept that, but it has not been platted yet, but that is the opportunity at platting. We have an opportunity at platting to control this too, when we come in for platting. We don't want 6 lots. We will let you plat it into 4 or 5, or whatever.

BARFIELD Mr. Docking, I understand there are 51 homeowners in this area. How many of those would you say that you represent?

DOCKING Technically, I represent the Owners Association, which is the governing body for the 51 lots. All I can tell you is that last year we had in excess of 80% of the homeowners filing petitions in opposition to the application last year. This year, again I am guessing, but I am thinking probably in the same range.

BARFIELD Would you be in a position to know or to state approximately the average acreage size of these homes?

DOCKING The average size for the 51 lots is between 2 and 4 acres per lot.

AUDIENCE The smallest lot is 2 acres, and the largest is 4.3 acres.

DOCKING The average size of these new lots, even at 6 lots is going to be substantially less, less than 1/2 the smallest.

BARFIELD Are you speaking of Barefoot I, or Barefoot II?

DOCKING Both.

AUDIENCE Barefoot II.

COULTER What are the sizes on Barefoot I?

DOCKING They average is about an acre on Barefoot I.

GAROFALO Scott, will you show us Barefoot I and Barefoot II on the aerial?

WELLS How many lots are there on Barefoot I, and how many lots are there in Barefoot II?

KNEBEL I don't know the exact number, but I think there are approximately 7 or 8 lots on Barefoot Bay II, and the rest are in Barefoot Bay I.

AUDIENCE There are 9 lots in Barefoot I, and 41 lots in Barefoot Bay II.

MOTION: Approve per staff comments.

WARNER moved, **MARNELL** seconded the motion.

SUBSTITUTE MOTION: Deny the application based on the fact that the requested site is not really out of character with the larger area, and that it is appropriately zoned as it is; that the lake traffic situation is a pertinent factor to consider, and that there is neighborhood opposition, and that there is also detrimental impact on the neighboring properties.

BISHOP moved, **BARFIELD** seconded the motion.

MICHAELIS I would like to point out that I am sympathetic with the lake use issue, and it sounds like there is a problem there, and that you guys are well aware of it, and I hope for your sake, and the safety for yourselves and your families, that you can correct it. The problem is that I don't really know of anything in the Zoning Code that tells us how to handle a lake use issue. We have several guidelines as far as the land use issue, and this is really two different things, and so that makes it fairly difficult. Primarily our job is to make decisions based on a land use issue and not something that is really governed by a Homeowners Association Board, where you have really more opportunities to control and take care of existing problems that you may have through your own covenants and restrictions rather than something like this. I guess I am just trying to say that based on the outcome of this, which I don't know how it is going to go, but from my way of thinking, I got to look at it from a land use issue primarily.

ANDERSON I am troubled with the fact that we have not seen the full resolution of this matter as a result of the action that was taken by the City Council and also by the Court as well now it is in the District Court. I think the fact that a year has elapsed during that period of time, and they have the right to make a new petition for this, I think it is ridiculous to start the process over again, for us to approve something we know isn't going to be approved by the City Council or beyond this point. I am also sympathetic with the homeowners in that area. I don't remember how I voted on it the last time, but still I think that we have a responsibility to vote for this motion.

BISHOP The issue about whether or not the lake traffic can be regarded as a traffic issue was one of the elements that was cited by Mr. Martz at the City Council meeting, when he made the motion to deny. Obviously that has been upheld by District Court, so it does appear that is an issue much like an arterial is an issue as far as traffic is concerned. It is a land use case, and it is a land use impact.

WARNER He obviously has the right to bring this back after a year, and it is our job to hear it and make a decision on it. Whether the City is going to approve it or deny it we don't know, and we don't care. It is our job to do it, and it is his right to get it done, so I am opposed to the substitute motion.

BARFIELD I would agree that he does have the opportunity to bring this back. We must look at the first step, and the first step was the District Advisory Board, and they voted 7-0 on this brand new application to deny. They are supposed to hear this the same as we are. I agree with Elizabeth and Mr. Anderson, basically the Courts have already spoken on this issue, and this is primarily the very same application with just a couple of minor adjustments, and I don't see it going anywhere.

VOTE ON THE SUBSTITUTE MOTION: To deny the applications fails 3-10 (**ANDERSON, BISHOP**, and **BARFIELD** in favor of motion).

VOTE ON THE ORIGINAL MOTION: To approve application, subject to the following conditions:

Platting within one year and subject to the following provisions of Protective Overlay District #122:

1. If developed with a residential use, the density of the subject property shall be limited to 6 dwelling units on no more than 6 lots.
2. No more than three boat docks with two boat slips each shall be permitted on the lake from subject property. Each lot on the subject property shall be limited to one watercraft on the lake at any given time for a total of no more than six watercraft from the subject property.
3. Office use on the portion of the subject property zoned "NO" Neighborhood Office shall be limited to a home occupation as permitted by Section IV-E. of the Unified Zoning Code, except that up to four persons not occupying the dwelling unit may be employed in the home occupation.
4. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0230 or as otherwise agreed to from time to time between the owner of the subject property and the Barefoot Bay Owners' Association.

VOTE ON ORIGINAL MOTION: Carried 10-3 (**ANDERSON, BISHOP** and **BARFIELD** opposed)

BISHOP I would like to say, that especially in light of Mr. Michaelis' suggestion that the Homeowners Association really needs to address their lake traffic problems themselves, because that is what Homeowners Associations do. I think there is a situation of an implied promise that Mr. Ritchie, or the Ritchie Corporation provided for this area. The Ritchie cabin was there. The sale of the Ritchie cabin is what appears to have precipitated the problems. I don't think the developers in the community want the word to get out that Homeowners Association promises aren't worth the paper that they are written on. But continually at this table when

Homeowners Associations are mentioned the attitude is that is not for us to consider, and yet that is what things are marketed on. Those are the marketing promises that are made to consumers and customers of housing and it happens over and over again.

MCKAY I am getting ready to leave because I have another meeting to go to, but I want to say that what Commissioner Bishop did, almost giving these people legal advice about what they can and cannot develop, is completely out of line. That is not anything that we should be even coming close to telling people. Regardless of who it is against, an individual, a builder or anybody else, it is almost like giving legal advice and going out and saying go out and sue whoever it might be because they lied to you, and that should not come from this bench.

HENTZEN I might tell you that Joan Cole found that out from the courtroom.

8. **Case No.: ZON2003-04** – Certified Builders, Dennis Niedens request a Zone change from “SF-5” Single-family Residential to “TF-3” Two-family Residential on property described as;

The South 28 rods of the Northeast Quarter of the Southeast Quarter of Section 15, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, except the South 90 feet thereof and except that part taken in Condemnation Case A-77196. Generally located West of Hoover and north of Elm

BACKGROUND: The applicant requests “TF-3” Two-family Residential zoning on a 1.81-acre site for duplex development; the application area is currently vacant. The site is on the west side of Hoover, and north of Elm. Most property surrounding the application area is zoned “SF-5” and developed with single-family residences. Some nearby property also remains vacant. Several lots north and south of the application area are zoned “TF-3”. Most of those are developed with single-family uses. A few are developed with duplex units. Immediately west of the application area is I-235.

The proposed zone change, from “TF-3” to “SF-5,” and the proposed development, would require conformance to all property development standards in the Wichita-Sedgwick County *Unified Zoning Code* (UZC).

CASE HISTORY: The application area is unplatted and undeveloped. The applicant submitted a one-step plat on January 13, 2003; the plat was approved by the Subdivision Committee of MAPC on January 30, 2003, and will be heard by the MAPC on March 6, 2003. The requested plat calls for six lots, with a minimum lot width of 60 feet along Hoover, and one opening per lot. Platting will also require a guarantee for the paving of Hoover at the application area.

ADJACENT ZONING AND LAND USE:

NORTH: “SF-5”	single-family homes
SOUTH: “SF-5”, “TF-3”	single-family homes
EAST: “SF-5”	single-family home
WEST: “SF-5”	I-235

PUBLIC SERVICES: The site is on the south side of Hoover, and north of Elm. Hoover is an unpaved, two-lane collector with a 90-foot right-of-way at this location. No traffic counts or projections exist for this section of Hoover, and no CIP plans exist for this section of Hoover. City water and sewer are available to the application area. Platting requires a guarantee to pave Hoover at the application area.

CONFORMANCE TO PLANS/POLICIES: The “Wichita Land Use Guide, as amended 1/02” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the application area as “Low Density Residential”. The Land Use Guide does state that “Low Density Residential” may include pockets of higher density residential. The UZC states that the “TF-3” district is generally compatible with the “Medium Density Residential” designation of the *Comprehensive Plan*.

The *Comprehensive Plan* “Wichita Residential Area Enhancement Strategy” classifies the application area as being within the “Conservation Area”. Enhancement strategies for that area include zero tolerance code enforcement; and technical/design assistance for homeowners, setback flexibility for building enhancements, and limited financial incentive programs to encourage renovation, remodeling and modernization of older housing stock.

Other *Comprehensive Plan* goals affecting the application area include encouraging residential infill at higher densities (II.A.), and encouraging mixed income residential developments (XI.B3.).

The application area falls within the Orchard Breeze Neighborhood Plan, prepared in November 1999. The neighborhood plan encourages quality, visually attractive infill development, and street paving improvements.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the zone change request be APPROVED subject to platting within one year, and subject to the owner/developer signing the petition to pave this section of Hoover.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Most property surrounding the application area is zoned “SF-5” and developed with single-family residences. Some “TF-3” zoning pockets exist in the general area, as do a few two-family units. The requested zone change and proposed duplex development would not be out of character with the surrounding neighborhood.

2. The suitability of the subject property for the uses to which it has been restricted: The application area is zoned "SF-5" and could be developed at a similar density as proposed by the applicant, but with single-family residences. This property has remained vacant for some time; the site backs up to I-235, which may make it less attractive for single-family development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed zone change, from "SF-5" to "TF-3", and the proposed duplex development, would require conformance to all property development standards in the UZC. This zone change, and proposed development, should not have a detrimental effect on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Comprehensive Plan* "Wichita Land Use Guide" designates the application area as "Low Density Residential", which may include pockets of medium density residential development. Other policies of the *Comprehensive Plan* encourage infill residential development at higher densities. The Orchard Breeze Neighborhood Plan encourages quality, visually attractive infill development, and street paving improvements.
5. Impact of the proposed development on community facilities: The requested re-zoning would have the result of increased traffic on this residential portion Hoover. The increase in traffic should only be a slight increase over traffic that could be generated under the current "SF-5" zoning. As the owner/developer is required guarantee the paving of Hoover, an increase in traffic should be mitigated by the improved road surface.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **COULTER** seconded the motion, and it carried (10-0). **BARFIELD, JOHNSON**, and **WARREN** absent.

9. Case No.: ZON2003-05 MIH LLC c/o Robert G. Wall request a Zone change from "B" Multi-family Residential to "GC" General Commercial on property described as;

Lots 20, 22, 24 and 26, on Market Street, Payne's Addition to the City of Wichita in Sedgwick County, Kansas. Generally located Southwest of Kellogg and Market (723 & 731 S. Market)

BACKGROUND: The applicant is seeking "GC" General Commercial zoning for Lots 20, 22, 24 & 26, Payne's Addition, located southwest of the East Kellogg Drive and Market Street intersection. These lots are currently zoned "B" Multi-family Residential and are vacant. These lots are part of an approximate 1.03-acre site that the applicant proposes to develop for the relocating Lewis Street Glass Company and are the only part of the site that is not zoned "GC". Rezoning the lots will give the applicant the same zoning for the whole site, which has East Kellogg Drive on its north side, Market Street on its east side, Orme Street on its south side and a paved alley on its west side.

The site is undeveloped except for a vacant auto service on the south end. Development will consist of new buildings, parking and landscaping for the Lewis Street Glass Company with the primary frontage being on East Kellogg Drive. The vacant auto service will be renovated and be part of the glass company. East Kellogg Drive is a frontage road for Kellogg - US Highway-54. There is no direct access onto East Kellogg Drive and the City has recently installed landscaping in that ROW. Access onto the site is off of Market, Orme and the paved alley.

The site is part of a block wide area of mostly commercial zoning and recent commercial development, located between Orme Street on the south and Kellogg - US Highway-54 on the north. The block wide area extends to Water Street on the west and Topeka Street on the east. US-54 separates the site from the "CBD" Central Business District zoning area that covers most of downtown Wichita. The areas west and east of the site are a mix of recent developed and redeveloped "GC" & "LC" zoned properties and a fewer older, developed "B" zoned properties. The developed properties closest to the site include a renovated multi-storied hotel, Kansas Blueprint, a newer long-stay type motel, a retail business, a bank, and two older, large single-family homes. The long-stay type of motel is designed to appear more like an apartment complex. Properties to the south, across Orme Street, are overwhelmingly zoned "B" and developed as a mix of single-family residential with some duplex and multi-family.

CASE HISTORY: Lots 20, 22, 24 & 26 are part of the Payne's Addition, which was recorded May 30, 1883.

ADJACENT ZONING AND LAND USE:

NORTH:	"GC" General Commercial	Undeveloped & US Highway 54
SOUTH:	"GC" General Commercial	Vacant auto repair & residential
EAST:	"GC" General Commercial	A hotel & single – family residential
	"B" Multi-family Residential	
WEST:	"GC" General Commercial	A bank, retail business & long-term stay motel

PUBLIC SERVICES: East Kellogg Drive is a 2-lane, with a turn lane, one-way going east frontage road for Kellogg – US Highway-54. Market Street is a one-way going north 2-lane road. There are no daily traffic counts at this intersection. The City gives no traffic counts for frontage roads. There is no access allowed onto East Kellogg Drive off of this site. The 2030 Transportation Plan projects no change for these roads. Public sewer and water services are available.

CONFORMANCE TO PLANS/POLICIES: Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* indicate that commercial sites should: be located adjacent to arterial streets or major thoroughfares; be coordinated with mass transit routes, high density residential, employment or other intensive uses; have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential uses; be located in

compact clusters or nodes versus extended strip development; and be located in areas of similar development, and where traffic patterns, land uses and utilities can support such development. The *Wichita Land Use Guide* recommended land use map depicts this site as appropriate for commercial uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED. The business of the Lewis Street Glass Company is considered Manufacturing, limited. Manufacturing is allowed in the "GC" zoning district when the entire frontage of the ground floor along the principal street frontage is used for office space, display, or wholesale or retail sales. East Kellogg Drive is the principal street frontage. The applicant has agreed to a combination of office space, display, or wholesale or retail sales for the entire frontage of the ground floor along East Kellogg Drive.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: US Highway-54 separates the site from the properties to the north, which are zoned "CBD" Central Business District. Properties to the east and west are zoned "GC" & "LC", with a few "B" zoned properties. These areas have experienced recent development and renovation with a bank, Kansas Blueprint and a hotel and a long stay type of motel, being the most recent developments. The only developments on the "B" zoned properties are two older, large single-family homes, which are the oldest buildings north of Orme. Property to the south, across Orme, is zoned "B" and consist of older single-family homes with a mix of 4-plexes and duplexes throughout the area spreading south.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" multi-family. The site is a small isolated "B" zoning area surrounded by "GC" & "LC" zoning. The site could be developed for multi-family use, but it would be out of character with the recent commercial re-development in the area that surrounds it.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested zoning change of "B" to "GC" is in character with the area. The business of the Lewis Street Glass Company is considered Manufacturing, Limited. The UZC's requirement that manufacturing allowed in "GC" zoning must have the entire frontage of the ground floor along the principal street frontage used for office space, display, or wholesale or retail sales will allow this business to fit into the area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested zoning change to "GC" matches the plan's recommendation of commercial uses for this site.
6. Impact of the proposed development on community facilities: Impact will be minimal, although traffic will increase as the site's current undeveloped and vacant state changes to the proposed development. The Lewis Street Glass Company is considered Manufacturing, Limited and Manufacturing generates 4 trips per 1,000-square feet of floor area per day with an additional 0.75 trips per 1,000-square feet of floor area per peak hour.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **WELLS** seconded the motion, and it carried (12-1) **BISHOP** opposed.

-
10. **Case No.: ZON2003-06 -** Kansas Food Bank Warehouse, Inc. (owner); Spangenberg Phillips, c/o Ron Spangenberg (agent); PEC c/o Rob Hartman (agent) request a Zone change from "B" Multi-family Residential to "LI" Limited Industrial on property described as;

B-Multi Family To L.I.
Legal Description For
Kansas Food Bank Warehouse

Lots 5 Thru 12, And The South 10.1 Feet Of Lots 3 And 4, Black's Addition To Wichita, Sedgwick County, Kansas; Together With That Portion Of The Alley Adjuacent To Lots 1 Thru 12; Together With The 20 Foot Alley Lying South Of Lots 63, 65, And The East 10 Feet Of Lot 59 In Black's Addition To Wichita, Sedgwick County, Kansas Except That Part Of Lots 1, 2, 3, 5, 7, 9 And 11 Dedicated To The City Of Wichita For Highway Purposes. Generally Located On The Southeast Corner Of Douglas And Minneapolis.

BACKGROUND: The applicant is requesting rezoning of a 0.76 acre of property located south of Douglas and east of Minneapolis Avenue from "B" Multi-family Residential to "LI" Limited Industrial. The rezoned tract would be combined with property currently zoned "LI" that is located south of Douglas and extends from Minneapolis Avenue eastward to Minnesota Avenue and I-135. The proposed use for the combined tract is an office and warehouse for the Kansas Food Bank Warehouse.

The proposed property for rezoning includes an abandoned parking lot, two dwellings, and a portion of an alley. The combined site includes an abandoned used car lot that has been reused as an office by the Kansas Food Bank. A portion of the proposed parking and loading area would be located on right-of-way associated with I-135 (the Canal Route). The applicant is in the process of receiving approval (minor street privilege) to use this property for parking and loading space.

The surrounding area to the north and northwest is commercial and industrial and is zoned "LI". Douglas Avenue is the historic main street from the core area, and has a mix of commercial, office and industrial uses in the vicinity of the Food Bank site. The property directly north of the Food Bank is currently vacant but was a former car dealership. Many buildings along Douglas have zero-lot setbacks, most are of brick or masonry construction. The property to the south and west is zoned "B" and developed mostly

with single-family residences, with a few apartments. I-135, the Canal Route, borders the property on the east. Wichita High School East is located on the eastern side of the Canal.

CASE HISTORY: The area was platted as Black's Addition in 1886.

A replat entitled Kansas Food Bank Warehouse Addition (SUB2003-00011) has been filed. The plat contains the proposed rezoning tract plus the property extending to Douglas. The plat would remove the existing alleys within the tract and establish a building setback of ten feet along Douglas.

ADJACENT ZONING AND LAND USE:

NORTH: "LI"	Retail, office, industrial, warehouse, vacant
SOUTH: "B"	Single-family residences, scattered apartments
EAST: Unzoned; "LC"; "B"	I-135 and Canal, Wichita High School East
WEST: "B"	Single-family residences, scattered apartments

PUBLIC SERVICES: Douglas is identified as a five-lane arterial on the 2030 Transportation Plan, but narrows to four lanes along the Food Bank tract near the bridge supports for I-135. The nearest traffic count for 2002 was 13,066 cars per day for two-way traffic volumes on Douglas at Hydraulic. Projected volumes for 2030 were 24,000 cars per day.

A bike path winds along the edge of the proposed site. The bike path is located within the I-135 right-of-way.

The proposed plat provides a hammerhead turnaround at the end of the alley being vacated by replat. The turnaround would maintain secondary access to the houses abutting the remainder of the alley to the south of the application area. Additionally, a new cul-de-sac would be constructed on Minnesota Avenue approximately 250 feet south of its current location. The cul-de-sac is being relocated to add more property to the Food Bank site. As part of the plat, staff has requested a contingent dedication of 10 feet of right-of-way on Douglas and that one opening (right-in/right out only) be permitted on Douglas.

All other normal municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES:

The Wichita Land Use Guide in the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* classified the subject tract as "commercial" and "low density residential".

The Comprehensive Plan objective for commercial use that applies to the site (**Objective III.B**) is to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses". The strategy corresponding most closely to this site is **Strategy III.B.1** to "regulate new strip commercial development to areas identified by the "Wichita Land Use Guide". The area along Douglas from Old Town eastward to Hillside is an existing strip of mixed commercial, institutional, office uses and apartments, mostly developed prior to 1960. Zero-lot and shallow setbacks bring the buildings close to Douglas, giving the street its urban character. Most parking is located to the side or rear of buildings. This pattern is replicated by the proposed site plan for the Food Bank.

The southern portion of the site is shown as "low density residential". This application would not be in conformance with the Wichita Land Use Guide for the southern portion of the site.

Policy considerations to include adequate buffering between the site and the bike path, as well as screening and landscaping between the site and the housing to the south, would help mitigate the interface between the boundary of residential and commercial uses, and are included in the "Recommendations" section.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED, subject to replatting within one year and subject to a protective overlay with the following conditions:

1. The property shall be limited to those uses permitted in the "LC" Limited Commercial district and to warehouse use. Outdoor storage activities shall conform to the "Outdoor Storage" requirements of the "LC" district.
2. No billboards shall be allowed. Building signs shall not be permitted on the south building elevation and shall not be permitted on the west building elevation except in the northern 30 feet of the property to be rezoned. Directional signage not over five feet in height shall be permitted to allow for proper traffic access to the site per the City of Wichita Sign Code.
3. Primary exterior building materials shall consist of brick, EIFS, stucco, or precast concrete. Metal or wood siding shall not be permitted as an exterior material except as incidental trim.
4. A wrought iron fence and a landscape buffer at least 15 feet in width shall be provided between the edge of pavement of parking and loading areas and the boundary of the site, defined as the edge of the area granted a minor street privilege. The landscape buffer shall contain a minimum of one tree every 30 feet, and solid parking lot screening along parking, loading and drive aisles, consisting of shrubbery that is a minimum of three feet in height at maturity. Landscaping for other portions of the tract shall meet the City of Wichita Landscape Ordinance.
5. Solid wood fencing at least six feet in height shall be allowed on the south property line.
6. Lighting standards shall be no more than 20 feet in height, and shall otherwise conform to Sec. IV-B.4 of the Unified Zoning Code.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area to the north and northwest is commercial and industrial and is zoned "LI". Douglas Avenue is the historic main street from the core area, and has a mix of commercial, office, and industrial uses in the vicinity of the Food Bank site. The property directly north of the Food Bank is currently vacant but was a former car dealership. Many buildings along Douglas have zero-lot setbacks; most are of brick or masonry construction. The property to the south and west is zoned "B" and developed mostly with single-family residences, with a few apartments. I-135, the Canal Route, borders the property on the east. Wichita High School East is located on the eastern side of the Canal. The proposed office/warehouse facility is similar in use and intensity to non-residential uses in the vicinity.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "B" Multi-family Residential but the western half of the tract is a vacant parking lot. This is not a permitted use in the "B" zoning district today, but would require a Conditional Use for ancillary parking. It is not likely residential use would be reestablished where the parking lot is located. The property fronting onto Minnesota Avenue is located between the vacant parking lot and I-135/bike path. While it could be used as currently zoned for residential purposes, its juxtaposition between a major highway and a parking lot detracts from its residential desirability.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed protective overlay provisions should reduce the impact of the non-residential use on the residences to the south and west of the proposed site.
4. The length of time the subject property has remained vacant as zoned: The property was vacant for about a year before the Kansas Food Bank began using it as an office facility.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The addition of a major new office and warehouse along Douglas, particularly one with a strong street image, would enhance the streetscape in this segment of Douglas. This is a positive impact for the area and should encourage other high quality reuse along the Douglas corridor.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed zone change, with the protective overlay provisions, conforms to the Comprehensive Plan objective for commercial use in strip commercial development. The protective overlay provisions would minimize impact to surrounding residential uses, in conformance to the strategies of the Comprehensive Plan.
7. Impact of the proposed development on community facilities: The impact on traffic has been evaluated and recommendations for one opening that is right-in/right-out only from Douglas was included as a condition of the plat. The proposed additional screening is designed to minimize impact on the bike path. Impact on other public facilities should be minimal.

DONNA GOLTRY, Planning staff presented staff report.

HENTZEN Donna, if there is nobody from the public we can take this as consent.

GOLTRY There is something I need to add from the Subdivision Committee. The Subdivision voted and asked that we add one protective overlay condition to the existing protective overlay. That is that on Douglas Ave. the access be right-in/ right-out only. It is my understanding that the applicant is in agreement with all protective overlay conditions including, this condition.

BARFIELD Is there an opening on Minneapolis? Is there a left turn provision there?

GOLTRY Yes.

GAROFALO Do we have a site plan?

WARREN This is a complicated case because it is not only the application area, but it is the area to the east that they have right of access and there is an agreement between the two. So when this came to Subdivision, it was hard for us to figure out, because we were dealing not only with the subject area but apparently with some agreement that exists between them and the City to the east. It all worked out, but it took us a while.

GAROFALO I would like to get a little better understanding on Item 4 about the landscape buffer and fencing. Can you show us what you are talking about.

GOLTRY The landscape buffer and the wrought iron fencing discussed in Item 4 is in order to provide a nicely landscaped edge between the parking lot for the Kansas Food Bank Warehouse and the bike path.

WARREN Show him what is not included in the plat. Show them on the east that it is not a part of this application.

GAROFALO But, the buffer and the fence the City owns. The solid wood fencing where is that?

GOLTRY That would be on the southern property line along here.

HENTZEN What should be the motion?

GOLTRY Approve subject to staff comments with the addition of the statement about Douglas being a right-in/ right-out access only.

MARNELL The landscaping and the fencing that is screening the bike path by the canal right?

GOLTRY Yes, they will relocate some of the existing vegetation that is pretty nice.

MARNELL This is a worthwhile charity. Why do so much landscaping? We they can use the money elsewhere in their charity.

GOLTRY This is an area where federal funds have been used to acquire the property and construct the improvement. It is for the highway, and also the bike path, and it has federal funds involved with it. As such, we must protect the integrity of the bike path.

MARNELL This is a route I use to travel a lot and I have never seen a bicycle on that path.

BISHOP I would like to point out that I asked the applicant about the possibility of reworking the paving and asked if they would do curb cuts as well to connect to the bike path.

BARFIELD I have a problem with what are we going to accomplish by making that drive on Douglas a right-in and right-out only when they can go to Minneapolis and back and left turn.

MILLER It is the number of conflict points. Minneapolis is a street and people are used to full movements there. This at the driveway would minimize conflicts with Minneapolis by have a right turn.

GOLTRY Minneapolis is another 200 feet to the west. The visual conflict with the peer system of I-135 is another reason for the right-in/ right-out.

HENTZEN That used to be a restaurant, is that the part of the area that they are talking about for that business?

GOLTRY Yes, it is part of the rezoning.

HENTZEN Is that house coming down?

GOLTRY Yes, it will be coming down.

ROB HARTMAN, PEC We are in agreement with staff comments and conditions.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WARREN moved, **BARFIELD** seconded the motion, and it carried (10-1) **MARNELL** opposed.

MICHAELIS We talked at break that we want verbatim minutes done on Agenda Item #7.

MILLER We can do that.

11. **Case No.: P.U.D. 2003-01 #16 -** Rusty Eck Ford c/o Les Eck & City of Wichita c/o Steve lackey (owner/applicants); AM Consulting, Inc. c/o Kim Edgington & Kaplan, McMillan, & Harris c/o Robert W. Kaplan (agents) request a Planned Unit Development for the relocation of a vehicle sales business in conjunction with the Kellogg freeway project on property described as;

A tract of land located in the SW ¼ and the SE ¼ of Section 19, Township 27 South, Range 2 East, of the 6th Principal Meridian, Sedgwick County, Kansas being more particularly described as follows: Lots 1, 2, 3, 4, and 5, Block 1, Rockwood South Fifth Addition, Wichita, Sedgwick County, Kansas. Lot 1, Rockwood South Third Addition, Wichita, Sedgwick County, Kansas. Lots 1 and 2, Rockwood South First Addition to Wichita, Kansas. Lot 1, Aboud Addition, Wichita, Kansas. And Lot 1, EXCEPT the West 30 feet and EXCEPT the North 120.0 feet of the East 19.5 feet and Lot 2, EXCEPT the North 120.0 feet, Block A, Clayton Addition to Wichita, Sedgwick County, Kansas. EXCEPT for a tract of land being more particularly described as follows: Beginning on the South line at 30.0 feet East of the SW corner of Lot 1, Block A, in said Clayton Addition; Thence North parallel with the West line of said Lot 1 for a distance of 137.74 feet; Thence East parallel with the South line of said Clayton Addition a distance of 270.0 feet to the East line of said Clayton addition, said point being 137.74 feet North of the SE corner of Lot 2 in said Clayton Addition; Thence East 150.0 feet to the East line of Lot 1, in said Rockwood South First Addition, said point being 138.57 feet North of SE corner of said Lot 1; Thence East 300.07 feet to the East line of Lot 2, in said Rockwood South First Addition, said point being 126.69 feet North of the SE corner of said Lot 2; Thence East 362.65 feet to the East line of Lot 1, in said Rockwood South Third Addition, said point of intersection being 82.86 feet North of the point of curvature at the SE corner of said Lot 1; Thence South along the East line of said Lot 1 for a distance of 82.86 feet to a point of curvature; Thence southwesterly on a curve to the right having an arc length distance of 53.24 feet to a point of tangent, said curve having a radius of 33.72 feet, a central angle of 90°28', and a tangent of 34 feet; Thence West on the South line of said Lot 1 for a distance of 330 feet to the SW corner of said Lot 1; Thence South on the West line of said Lot 1 for a distance of 10.0 feet to the SE corner of Lot 2 in said Rockwood South First Addition; Thence West along the South line of said Lot 2 for a distance of 300.0 feet to the SE corner of Lot 1 in said Rockwood South First Addition; Thence continuing West along said South line of said Lot 1 for a distance of 150 feet to the SW corner of Lot 1 in said Rockwood South First Addition; Thence continuing West along the South line of Lots 1 and 2, Block A, in said Clayton Addition for a distance of 270.0 feet to a point on the South line at 30.0 feet East of the SW corner of said Lot 1 to the Point of Beginning. Said tract contains 672,631 square feet more or less. Generally located on the northwest corner of Kellogg and Armour

BACKGROUND: The applicant requests a zone change from "GC" General Commercial, "LC" Limited Commercial, and DP-12 Kellogg Mall Community Unit Plan (CUP) to Planned Unit Development (PUD) District #16 on a 15.3 acre platted tract located at the northwest corner of Kellogg and Armour. A majority of the subject property is currently developed with the Rusty Eck Ford vehicle dealership. The remainder of the subject property was formerly developed with various commercial businesses that have been or will be razed in conjunction with the Kellogg freeway project. The proposed use of the subject property is to relocate the Rusty Eck Ford vehicle dealership further north and west of the current location.

The character of the surrounding area is that of a regional commercial center with a large regional shopping center and vehicle dealerships being the predominate uses in the area. With the exception of the apartment complex to the west that is zoned "B" Multi-Family and the single-family residences located to the west within the City of Eastborough, the adjoining properties are predominately zoned "LC" Limited Commercial.

The proposed PUD (see attached) would consist of two parcels. Parcel 1 (15.3 acres) is proposed for vehicle and equipment sales; vehicle repair, limited and general; car wash; commercial parking area; outdoor storage; vehicle display; vehicle storage yard; service station; and warehousing. Parcel 1 would be developed with a total of seven buildings totaling no more than 200,873 square feet and constructed in four phases that are dependent on the Kellogg freeway construction schedule. Parcel 2 (900 square feet) is proposed for a 720 square foot billboard at a height of 40 feet. The PUD also proposes a 400 square foot arbitron sign at a height of 40 feet and a sign up to a maximum size of 300 square feet at a height of 80 feet in addition to all signage permitted by the "GC" General Commercial zoning district. No landscape street yard or landscape buffering is proposed, with the only proposed landscaping being a five-foot strip of evergreen shrubs along Kellogg to be located off-site within the street right-of-way and 20 shade trees around the customer service area adjacent to Armour. Light poles are proposed to be limited to 20 feet in height where adjacent to residential uses and 30 feet in height elsewhere on the property. A 6 to 8 foot high masonry screening wall is proposed along the north and west property lines where adjacent to residential uses. The applicant proposes to comply with many, but not all, of the zoning code standards for operating a vehicle dealership in the "LC" district.

The PUD District is a special purpose zoning district that is intended to encourage innovative land planning and design by allowing development to take advantage of special mixtures of land uses and by allowing minor deviations from zoning standards if not contrary to the general spirit and intent of the zoning code. The applicant indicates (see attached letter) that the PUD District is requested for the subject property due to the numerous waivers of the zoning, landscape, and sign code provisions requested for the development. Since many of the requested deviations are not minor, planning staff is recommending conditions of approval pertaining to signage; landscaping; building and site design; site access, circulation, and parking; lighting; setbacks; permitted uses; and operational standards to ensure the intent of the PUD District is met and to ensure consistency with past approvals, including approvals for the subject property.

CASE HISTORY: The subject property has a lengthy case history involving cases too numerous to list in complete detail in this report. The property contains several plats. Several zone changes, CUP amendments, and use exceptions have been approved for the subject property. A use exception (BZA28-94) to permit an expansion of the vehicle dealership was approved by the Board of Zoning Appeals on January 25, 1994. This use exception required numerous conditions of approval (see attached) pertaining to landscape buffers, lighting, sound, signage, and operational standards that were not accounted for in the applicant's proposed PUD. The recommended conditions of approval maintain the previous conditions of approval as much as practical.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Retail, restaurant, office
SOUTH: "LC" & "GC"	Vehicle sales, hotel
EAST: "LC"	Regional shopping center
WEST: "B" & Eastborough	Apartments and single-family

PUBLIC SERVICES: The site will have access to frontage roads for both Kellogg and Armour and to the local commercial streets named Willow Brook and Whittier. The design of the streets around the site is being coordinated with the Kellogg freeway project, and the PUD plan needs minor modifications as described in the recommendation section to reflect the correct street design. Other public services are presently provided to the site, and the relocation of utilities associated with site redevelopment will be determined through the platting process.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide indicates that the subject property is appropriate for "Commercial" development. The Commercial Locational Guidelines indicate that commercial sites should be located adjacent to arterial streets and should have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses. If approved subject to the recommended conditions of approval, the requested PUD will meet the Commercial Locational Guidelines.

RECOMMENDATION: While planning staff supports the redevelopment of the subject property for use by the Rusty Eck Ford vehicle dealership, the proposed PUD requests waivers of the zoning, landscape, and sign codes that do not meet the general spirit and intent of these codes and are inconsistent with past approvals, including past approvals on the subject property. The requested waivers would establish a precedent for commercial development that is not in harmony with the community's established development patterns, especially the request for large signage that would lead to increased visual clutter and the request for no landscape buffering that would lead to detrimental affects on nearby residential uses. Therefore, planning staff has developed recommended conditions of approval to mitigate these impacts. Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to replatting the subject property within one year and subject to the following conditions:

1. General Provisions #1 through #4 shall be eliminated and replaced with a General Provision that reads as follows:

Signs shall be permitted per the Sign Code of the City of Wichita for the "GC" General Commercial

zoning district except that ground-mounted signs along the Kellogg frontage shall be permitted at a height such that the bottom of the sign is at a height equal to the height of the railing or barrier along the elevated freeway, but in no case shall the top of the sign exceed 35 feet. No off-site or portable signs shall be permitted. No streamers, banners, pennants, pinwheels, commercial flags, bunting, or similar devices shall be permitted.

2. General Provision #7 shall be modified to add the following:

Parking areas shall be developed per a site circulation plan approved by the Planning Director prior to the issuance of a building permit. Parking spaces for employees and customers shall be marked and designated for employees and customers only and shall not be used for display of vehicles for sale, unless the vehicle is driven by an employee.
3. General Provision #9 shall be modified to replace the reference to "CUP" with a reference to "PUD."
4. General Provision #11 shall be modified to indicate that the location of access openings shall be approved by the Traffic Engineer. The PUD plan shall be modified to relocate the eastern-most access opening on the Kellogg Frontage Road to a location approved by the Traffic Engineer. The PUD plan also shall be modified to illustrate the Armour Frontage Road as one-way southbound with a right turn channeling design at the Kellogg Frontage Road per the design approved by the City Engineer.
5. The reference to landscaping in the "Notes" section shall be moved to General Provision #12 and changed to require 30 shade trees or the equivalent. The existing language in General Provision #12 shall be deleted and replaced with the following:

Landscaping shall be installed per a landscape plan approved by the Planning Director prior to the issuance of a building permit. Required landscaping may be installed within the street right-of-way if a use of street permit is approved by the City Engineer. A landscape buffer in general conformance with the requirements of the Landscape Ordinance for the City of Wichita shall be provided along the north and west property lines where adjacent to residential uses.
6. General Provision #14 shall be modified to replace the phrase "adjacent to residential uses" with the phrase "located within 150 feet of the property line where adjacent to residential uses."
7. General Provision #15 shall be modified to replace the term "apartment complex" with the term "residential uses."
8. General Provision #17 shall be modified to add: "per the Screening Standards of the Unified Zoning Code."
9. General Provision #18 shall be modified to delete the phrase "on any building elevation visible from public right-of-way" and to add the following: "Building elevations shall be reviewed for consistency in architectural character by the Planning Director prior to the issuance of a building permit."
10. General Provision #21 shall be modified to add the following: "Outdoor speakers and sound amplification systems shall not be permitted."
11. A general provision shall be added that states the following: "There shall be no use of elevated platforms for the display of vehicles."
12. For Parcel #1, Item #2, the term "Maximum bldg. coverage" shall be changed to the term "Maximum Gross Floor Area."
13. Parcel #1, Item #3 shall be modified to state "Setbacks from abutting properties shall be as illustrated on the plan." The plan shall be modified to provide a 35-foot building setback line along the north and west property lines where abutting the apartment complex south of the electrical substation.
14. For Parcel #1, Item #5, the phrase "related to vehicle sales, including" shall be replaced with the phrase "shall be limited to following uses and any use determined by the Zoning Administrator to be accessory to or customarily associated with the following uses." Also, "outdoor storage" and "vehicle storage yard" shall be removed from the list of permitted uses.
15. Parcel #2 shall be eliminated and the property incorporated into the Parcel #1.
16. The plan shall be modified to show all proposed encroachments of fences, landscaping, parking areas, display areas, and other privately-owned improvements onto public right-of-way. Encroachments of such improvements onto public right-of-way may be permitted only with approval of a use of street permit by the City Engineer.
17. Approval of the PUD shall supersede and make null and void DP-12 Kellogg Mall CUP and BZA Resolution No. 28-94 as they pertain to the subject property.
18. The applicant shall submit four 24" x 36" folded copies and one 11" x 17" copy of the PUD to the Metropolitan Area Planning Department within 60 days after approval of the PUD by the Governing Body, or the request shall

be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of a regional commercial center with a large regional shopping center and vehicle dealerships being the predominate uses in the area. Most of the zoning in the surrounding area is "LC" Limited Commercial. The proposed development is generally consistent with the zoning, uses, and character of the surrounding area.
2. The suitability of the subject property for the uses to which it has been restricted: Much of the subject property is currently developed with a vehicle dealership and is suitably zoned; however, the Kellogg freeway project necessitates the relocation of a portion of the vehicle dealership onto adjacent properties that are not suitably zoned for vehicle sales. Therefore, the proposed redevelopment could not be accomplished without rezoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval regarding signage, landscaping, screening, architectural character, access, site circulation, and limited uses should limit most detrimental effects on nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide indicates that the subject property is appropriate for "Commercial" development. The Commercial Locational Guidelines indicate that commercial sites should be located adjacent to arterial streets and should have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses. If approved subject to the recommended conditions of approval, the requested PUD will meet the Commercial Locational Guidelines.
5. Impact of the proposed development on community facilities: No negative impacts on community facilities are anticipated.

SCOTT KNEBEL, Planning staff presented staff report.

WARREN Scott, I have a question about what paperwork we should be following I have two or three copies here and I don't know which one is the most current.

KNEBEL The copy of the P.U.D. plan that you received today is the one the applicant is now proposing subsequent to the hearing before the D.A.B. There were a number of recommended changes that the D.A.B recommended that the applicant has agreed to that are included in that plan.

WARREN So the P.U.D. plan that you mailed us we can get rid of?

KNEBEL Right, I will go through the differences between staff and the applicant and that is what we will focus the discussion on.

WARREN The one that you are going to present now is the one you handed out today?

KNEBEL That is correct. The Kellogg freeway is going to be coming through and taking the front portion of all of these properties. The centerline of the new freeway is going to be the front of the properties as they exist today along Kellogg Drive. That necessitates demolishing this vehicle dealership building and relocating it further north, and then that takes some land that is used for the display of vehicles and in exchange those vehicles will now be displayed over on this land where all but one of the buildings that is shown in this aerial have already been demolished. This is the lone remaining building on that Parcel today on the far west end of the property. This is where the Office Depot and other retail business were located. This would be a vehicle display area.

To get into the details of the changes that Mr. Warren mentioned, there has been some changes from the recommendations in the staff report. so really the recommendation section of the staff report is not what you need. You should use two memos dated March 5 and March 4th. The March 4th is from the D.A.B. and the March 5th is from me.

The D.A.B. did recommend that it be approved. It says subject to the MAPD conditions on the memo, but that is not accurate. The D.A.B. recommended that it be approved subject to conditions that they modified through their hearing process, and the applicant is agreeable to most of those. However, there are a least two changes that need to be made. On Item #5 on the D.A.B. memo, it was my understanding that the applicant was agreeable to the 30 shade trees and that the D.A.B. had required that. The applicant had originally proposed 20 shade trees, and the applicant and I discussed this before the meeting and I agreed with them that the statements that were made at the D.A.B. meeting indicated that the D.A.B. was not going to require any additional landscaping over and above what they are required to do today and what the applicant has proposed. So Item #5 on the D.A.B. memo, should say 20 shade trees and that would be what the D.A.B. recommended to the City Council and to this Board.

There also a missing Item that is not listed on the D.A.B. memo that was specifically discussed at the D.A.B. They discussed the issue that there had been a previous administrative adjustment to waive the landscape buffer that was required along the west property line adjacent to the apartment complex that is shown in the site plan that was approved by the BZA. That landscape buffer was waived and the requirement for the waiver was that there be a 8 foot wall constructed along the west property line. The D.A.B. stated that they wanted that wall and that it needs to be extended now to the new portion of the property to the south and west. They want the wall to be 8 foot high and that is not stated in the D.A.B. memo and should be.

WARREN That is not in either in the D.A.B. report nor is it in your recommendations, and now are you modifying your recommendation?

KNEBEL The D.A.B. specifically stated that, and I think it is reasonable.

WARREN Are you modifying yours?

KNEBEL To me it is not that big of a difference, but I think the applicant is agreeable to 8 feet and the D.A.B. recommended it.

BISHOP So would that be condition #20?

KNEBEL Yes. The areas where there are disagreement are on the signage, which I will get to in a second and talk about the memo that I prepared dated March 5th. The other item that we have is condition of approval #8 and that pertains to the predominate use of metal as a exterior building material. The applicant proposed that the metal not be a predominate exterior building material on any building elevations visible from public right-of-way. What you have now removes that entirely, and they are not making any proposal to have any limitations on the types of building materials on the new plan you received today. Planning staff is recommending that the statement be that metal not be the predominate exterior building material. So basically the building would need to be at least 51% of some other material.

WARREN Your #9 does not say that.

KNEBEL You need to be looking at the letter from the D.A.B. dated March 4th. The ordering of the staff report recommendations is different than March 4th letter I'm referring to.

WARREN I see that, but I am not sure that we are bound by this.

KNEBEL The other issue discussed, and I am not sure this is significant issue, was to eliminate Parcel 2 due to its small size and just combining it with Parcel 1. The only reason that Parcel 2 is even on the P.U.D. is so that it can have an off-site sign, and they are attempting, I guess, to create a second lot to say that this sign is off-site because it is on a second lot. I think the P.U.D. District can permit an off-site sign on this lot. I am not explaining it well. The issue is that they want the off-site sign to have their own business advertised on it which makes it on-site which then means that the square footage of that sign would be calculated into the allowable square footage, and so they are trying to create a separate second lot to make it be off-site so that they can say that is not on our property, that is on a second lot, and I don't think that is necessary, and I don't think we need to be creating 900 square foot lots just to put a sign on, and I think it is unnecessary so that is why we recommended against that.

So that leaves us with the issue of signage and what staff has recommended on the primary business identification sign, the sign that would say FORD. Staff is recommending that there be a sign that is limited to 300 square feet in size, which the applicant is agreeable to the size, and that the minimum height be the height at which the sign is visible to motorists on the freeway prior to the exits both east and west of the subject property and that height would be determined by a line of sight analysis that would be approved by the Planning Director and the Zoning Administrator. The applicant is requesting that the sign remain at 80 feet which is what their original request was. I think they are concerned a little bit about the subjective nature of such a analysis, and in return, staff was concerned that 80 feet is just a subjective number and could be way to high too accomplish their need, which is that they want that sign to be taller than what the sign code allows so that it can be visible prior to those exits so that people will know that is where the dealership is in time to make the maneuver to get off those exits and get to the property.

Staff is also recommending that the arbitron sign be limited to a maximum of 300 square feet in size instead of 400 that is requested by the applicant. The 300 square feet is a standard for on-site signs and we don't see that there is a need to increase the standard for on-site signage for this type of sign. We do agree that the height could be at a height of 35 feet due to the fact that the Kellogg freeway will be elevated, and were it to be limited to 25 feet, which is basically going to be the height of the roadway deck, that it would not be visible except from the access road.

In recognition that there will be two signs that are taller than normally would be allowed by the Zoning regulations that are standardized across the community, staff is recommending that any additional signs on the property be limited to a height of 20 feet. The applicant is requesting that those be 25 feet. The applicant agrees with our recommendations that the signs be spaced 150 feet apart, and they agree that they not be portable signs, but they are asking still for the billboard sign or the off-site sign that I discussed previously. The applicant had previously indicated to us that they were in agreement that there be no string type banners or pennants on the property, and that is currently a regulation that applies to the property and is listed in their BZA approval; however, their new proposal does not include that, and I didn't discuss that with them specifically to know whether that was a oversight or whether or not they were intending to be allowed that type of signage, but that would be granting them new signage that they are not permitted today. With that, I know we will have questions because this complicated, so I will start with that.

WARREN On that item 15 that deals with the creation of or that elimination of that Parcel 2, if this is a P.U.D., then we wouldn't be bound by the total number of square footage anyway the signs could encompass there. Would we not?

KNEBEL That is my point as to why there not be a second Parcel.

WARREN But, we might still be subject to the restriction to off premise signs. I can see why they want that number 2 there so as to isolate that sign as being different from all their other signage.

GAROFALO The current sign that they have, how tall is that?

KNEBEL I don't know the exact size or height of it. I would say that it is at least 35 feet.

GAROFALO Do you know where the proposed signs where they would be?

KNEBEL No, they have not indicated where the signs will be located other than by frontage. They have a couple of signs on Kellogg.

MICHAELIS What is the height of the road going to be?

KNEBEL The roadway deck is going to be 25 feet above grade and the grade is actually a little bit different from where the roadway is going to be to where the signage is going to be. There is a slope that slopes away from the roadway so the ground elevation of where the sign is going to be is lower than the base of the sign.

MICHAELIS So in our minds we should be taking 25 feet off the height when you say 80 feet, because in reality that is where it is going to be seen from.

KNEBEL Yes. There is going to be a visual obstruction that is 25 feet high in front of the property that is correct. I guess it will be 28 feet because it is 25 feet to the deck and then there is 3 feet for the railing.

KIM EDGINGTON, AM Consulting, The Ecks started with negotiations with the City of Wichita over 4 years ago on this property. There was a value engineering study and lots of members of City staff, KDOT, a lot of business people along Kellogg. There was a lot of discussion in those meetings about things that were important to the businesses and signage was a major issue, landscaping, access, etc. In the beginning there was going to be a shift to some of the properties to the south that they were all going to be affected. As the process cumulated, that went away, and now the only car dealership that is going to be affected by this Kellogg expansion is the Rusty Eck Ford property.

It has placed a burden on the Ecks to get through this process and still operate their business on a day-to-day basis. We are here before you today to ask for some items that we would not normally ask for, but they are going to be necessary for them to continue to operate their business. There is a significant landscape buffer along the south property line. It is heavily planted with shrubs. That was something that the Ecks offered in exchange for doing 20 trees on the property to enhance the visual appearance of that property. Because negotiations with the City for acquisition of the property are still ongoing, we have asked that the statement about metal buildings be removed, and we would like to have that flexibility. We asked for the P.U.D. so that we could build this from the ground up, so that we could specify issues such as signage and site circulation and landscaping, and lighting. The space on this property is absolutely at a premium. At this point, the Ecks are able to use the frontage roads for their circulation. Once they have to reconfigure the lot, their circulation must take place on their own property, so that has taken a lot of the space that they have now for storage of cars, which will then be used for circulation. Signage is a critical issue because over 40% of their business comes from out of town travelers. It is necessary to give these travelers an adequate time to make safe exiting maneuvers to have visible signage, and a lot of those customers from out of town already think they are moving. One of the main questions that the Ecks hear is where are you moving to? They just assume that because of the Kellogg expansion that they are leaving that site, so there is a serious issue in needing to educate the traveling public that they are still there. The off-site sign we are requesting is to help the motorist exist at the proper places.

WARNER Are the rules different from off-site signs then they are for on-site signs?

EDGINGTON Yes, the square footage allowances for off-site signs are different than on-site signs. The arbitron sign is something you would see at one of the major college football events. We are asking that be a 20 foot by 20 foot. Since we are dealing with a P.U.D., we aren't tied down to what would be allowed by the Sign Code. The arbitron sign they have now has the time and temperature on it now. They want a square sign instead.

The FORD sign, which is the sign that we have requested to be 80 feet, it is actually going to be less than 300 square feet in size because it is an oval shape. We have asked for 80 feet because at this point the roadbed is elevated at 25 feet. In addition there is a 3 1/2 foot railing on that, so if you were to view this sign at grade we are asking that the sign be allowed to be allowed 35 feet above your visual corridor along Kellogg. The grade of the property has a slope from the west end to the east of approximately 15 feet, so where this sign would be located is 15 feet lower than the property at the west end, so if you add those calculations up the 28 feet to the top of the rail, 35 feet that if you were at grade that is how tall the sign would be allowed, plus the 15 feet of the grade that is where we got an 80 foot sign.

BARFIELD On the current Ford sign how high is it?

EDGINGTON That sign is now 35 feet.

MARNELL I missed the 15 foot from one end of the property.

EDGINGTON From the west end of the property from the approximate location that the sign will be in there is a fall of about 15 feet in grade.

MARNELL So with respect to the roadbed at the point where the sign is it still the same?

EDGINGTON It is still 25 feet. But our concern is the slope and where the traffic is traveling from and the speed of the traffic.

GAROFALO The new highway is going to be elevated? From what point to what point?

EDGINGTON It will begin its ascent right after Woodlawn where the highway starts going up and then it is elevated over Armour and also Rock Road. So we have concerns with the traffic going east and west.

GAROFALO How far east will the bridge or road will go before it starts going down?

TIM AUSTIN, AM Consulting, It comes down just at Eastern Ave where the Circuit City is, and then it will go at grade and will go under what will be a new overpass for the turnpike exit.

GAROFALO By the time traffic gets anywhere near Rock Road they will be up high.

AUSTIN Right, but the exit for this property will be east of Rock Road. It is similar to going out to Scotch and you're eastbound on Kellogg and you want to get off, you have to get off on Oliver.

PATRICIA BUTIN, 64 Stratford Rd, Wichita, KS 67207, I am not here to protest the whole thing. I have concerns. We were assured there would be some landscaping issue. I am concerned about signage and the height of the signage and the landscaping issues. There is an office building behind my home and it is built of material that looks like a home. When the businesses shut down on the weekend, they have really been working with us to make it look nice to look at. I am worried about the north. I like the recommendations of staff, the wait and see approach of the signage.

BISHOP I was wondering if Scott or the applicant could answer the landscape issue.

KNEBEL The issue with the landscape buffer was that it was required by the BZA for the use exception when the car dealership expanded to this area to the north back behind the Red Lobster. The area was there and essentially there was a wood fence and a landscaped area and a chain link fence and then a car dealership, which created a buffer of landscaping that was landlocked. There were theft and vandalism problems, so the applicant requested, and was granted, an adjustment to remove the landscape buffer, the condition of which was that they would replace the wood fence, which was in poor condition, with an 8-foot concrete wall. That was done a couple of years ago.

BISHOP There is a condition in here to extend that wall?

KNEBEL Yes, the wall would extend south and west of the electrical substation.

BARFIELD At the facility on north Broadway. What is the height of that sign?

KNEBEL I am not sure.

WARREN I am trying to get a view when I drive north on I-135 to Salina. Do you know how tall that sign is for the Ford dealer there?

EDGINGTON It is 90 feet.

BARFIELD What about the sign on Broadway?

LES ECK, applicant The reason I know the height of that sign is that the Texaco station approached us to buy the Texaco station and get their 90 foot tall sign that goes with it. We are going to be about 180 foot away from the driving lanes is where all the signs will go.

GAROFALO If we put the site plan up there, can you show us where you are going to put the signs?

ECK Before I had the D.A.B. meeting, I spent an afternoon with Mr. Lackey trying to figure out where to put the storm sewer, gas lines, and all the other stuff that is going down the road, and a lot of it will determine the sign location because this is going to require a big base, and I can't put it next to your storm sewer or your gas line. I am crossing my fingers that I can get it close to the road. The FORD blue oval is much more elegant then the old sign I have now. We are dealing with subjective. I hate to say this, but so much of it is subject to that road and what it is going to be like, and that is why it is important that it be at the bottom of the road bed regardless whether it is east or west of that. We felt it needs to be at the bottom of the top of the roadbed.

WARREN In staff's condition Item #1 for dealing with signs, you are suggesting your #1 through #6, which is essentially covers those things that they are covering in their #1.

EDGINGTON Yes, sir.

WARREN In staff's condition #2 you are giving an explanation of those things in your #9 of your P.U.D.? Staff's condition #2 has to do with circulation plan, parking, etc..

EDGINGTON Yes, we have incorporated those in our P.U.D.

WARREN So Item #5 you are wanting to change from 30 trees to 20 trees, and that is reflective in your P.U.D.?

EDGINGTON Yes, and that was a general understanding between us and the D.A.B., that they were agreeable with the 20 trees.

WARREN Item #9 in the staff recommendation you have not address in your P.U.D.?

EDGINGTON What we did, we removed the phrase that said "metal buildings shall not be the predominant building material on any elevation". We did incorporate staff's recommendation that the elevations be reviewed for consistency and architectural character by the Planning Director.

WARREN I don't see in their report anything about metal buildings.

KNEBEL Their original proposal proposed metal not be the predominant exterior building material on any elevations visible to the public.

WARREN I am going to disregard that, because I am going to go back to your recommendations as presented us today, and I am going to ask the applicant then in Item #9 in the staff recommendation, can you agree to that?

EDGINGTON Well, part of it refers to metal buildings, so there is the initial part the first part of that recommendation we do need to strike because it refers to a condition that we removed.

WARNER Look at their #18.

EDGINGTON In the original P.U.D. document that we submitted #18 referred to metal buildings.

WARREN But the new one does not?

EDGINGTON The new one removed all reference to metal buildings.

WARREN Can you buy into Item #9 as recommended by staff today?

EDGINGTON Yes.

MILLER On that issue, was it discussed at D.A.B. and was that language in at D.A.B. or out at D.A.B.?

EDGINGTON It was discussed at D.A.B. and in the context that the negotiations are still ongoing and there may be changes in the elevation of the buildings. The architect may want to address that, and there are some materials that they would like to use that are going to be considered metal. The D.A.B. did not have an opinion on that.

WARREN I am only going to consider two documents. One that you are proposing and one that staff is proposing. Item #15 you would like that deleted having to do with that Parcel 2. This is a tough one.

EDGINGTON Yes, that is in my Item #4 in my P.U.D.

MOTION: To approve subject to staff comments except that staff comment #1 be replaced with the P.U.D. #1-6 from the applicant, that in the Item #5 of the staff recommendation that be changed to 20 trees, that Item #15 of staff recommendations be deleted in lieu of Item #4 of the P.U.D. application, and that the remainder of the P.U.D. application as proposed to us today be accepted as the P.U.D.

WARREN moved, **MICHAELIS** seconded the motion.

KNEBEL What is the intention regarding the exterior building materials. Are you under the impression that the applicant has agreed to the limitation of metal as not being the predominant material?

WARREN I don't want to limit the applicant of the ability to use metal. There are those that think those are ugly, but metal can be attractive. The motion is to accept staff comments of #9 as it stands.

KNEBEL On #9 it references adding a phrase to a statement that the applicant has removed from their proposal and that is why that first sentence is included on Item #9.

MICHAELIS We could just change the first sentence of #9 not to prohibit metal.

WARREN Okay, I amend my motion to change the first sentence of #9 to not prohibit metal.

MICHAELIS The second is agreeable to this amendment.

HENTZEN I want a clarification of what you meant by metal buildings versus something else. I don't want to be deciding what the people are going to build. Metal buildings have a very good cost ratio to building them and using them.

JOHNSON I want to talk about metal buildings, but I would like staff to explain to me what a metal building is. Is it cooper? It could be lots of things.

WARREN Let me ask the applicant, you said that it will not be predominately used?

EDGINGTON If the motion as it stands incorporates the language that we have written on the P.U.D., we are fine with it because we have eliminated any reference to metal buildings.

MOTION CARRIES (9-1) **BISHOP** opposed.

The Metropolitan Area Planning Department informally adjourned at 5:15 p.m.

State of Kansas)
Sedgwick County) ss

I, Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2003.

Dale Miller, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)